United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

75-7403

United States Court of Appeals

For the Second Circuit.

LEROY PORSS,

Plaintiff-Appellee,

-against-

MARITIME OVERSEAS CORPORATION,

Defendant-Appellant.

On Appeal From The United States District Court For The Southern District Of New York

---

Joint Appendix

Vol. I--Pages A1-A139 and 1--226

UNITED STATES COURT OF APPEALS
FILED
OCT 9 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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J/N

CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date:
BY PLTFF. 4-19-72

72 CIV. 1600

J. C. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
LEROY PORTS,	For plaintiff: ~~FUCHSBERG & FUCHSBERG~~ changed 11/26/73
AGAINST,	~~250 BROADWAY,~~ to
RITIME OVERSEAS CORP.	~~N.Y.C. N.Y. 10007~~ Hyde, Dickerson&Reilly 61 Broadway New York, N.Y.10006 943-7000
	For defendant: Wilson & Hopkins 116 John Street New York, New York 10038 CO 7 9600
	Subst: 5/29/74
	Haight, Gardner, Poor + Havens 1 State St. Plaza, NYC 1004 DI-4-6800

STATISTICAL RECORD	COSTS		DATE	PROCEEDINGS RECEIPT NO.	REC.	DISB.
J.S. 5 mailed X	Clerk					
J.S. 6 mailed ✓ 5/28/74	Marshal					
Basis of Action: PER INJ. NEG. JONES ACT $225,000	Docket fee					
	Witness fees					
Action arose at:	Depositions					

LEROY PORSS, VS. MARITIME OVERSEAS CORP. Leroy J. A2 -

72 Civ 1600

72 CIV. 160

DATE	PROCEEDINGS	Date Order or Judgment Not
R19-72	FILED COMPLAINT. ISSUED SUMMONS.	15.00
Y 9-72	Filed summons with marshal's return. Served Maritime Overseas Corp. by W.I. Reinhard on 4/27/72.	$4.20 W&H
y 23.72	Filed ANSWER.	
23.72	Filed Interrogs addressed to pltff to be answer as indicated.	
b 6.73	Filed Stip & Order that the motion now ret. 2/6/73 is adjourned to 2/20/73. So Ordered Weinfeld J.	
b.21.73	Filed Notice of Motion by dft. Re: Dismissing Complaint. ret. 2/6/73	
b.21.73	Filed Memo. End. on motion by dft. dated 2/21/73. Motion to dismiss is granted unless within 5 days from today answers to interrogs. are verified by the atty. & within 5 days after pltffs. return. SUBMIT ORDER. Weinfeld J. (M/N)	W&H
b 21.73	Filed Memorandum in support of motion . by dft.	
b 27.73	Filed Order. Ordered motion to dismiss complaint is granted unless as indicated. Weinfeld J. (M/N)	
eb 23.73	Filed Answers to Interrogs by pltff.	
r 15.73	Filed Notice of Motion. by Dft. Re: dismissing complaint. ret. 3/13/73.	
r 15.73	Filed Memo. End. on Motion filed this date. Motion for reargument denied. So Ordered Weinfeld J.	
r 15.73	Filed Memorandum in support of motion for reargument by dfts.	
r 14.73	Filed Answers to Interrogs. by Pltff. *deft*	
5-73	Filed affdvt. and notice of motion by ~~pltff~~ for an order dismissing complaint for failure of pltff to serve complete answers to defts interrogs. - ret. 7-31-73 at 2:15 P.M.	
5-73	Filed Memorandum by deft. in support of motion to dismiss complaint.	
Aug. 1,1973	Filed memo end. on motion dated July 5,1973 to dismiss complaint-- motion granted without opposition. Weinfeld, J. m/n	
ov.26-73	Filed for Deft. Change of attorneys from Fuchsberg, Fuchsberg to Hyde, Dickerson & Reilly	
n.11-74	Filed pltfs. interrog. todeft.	
an.21-74	Filed pltfs. supplemental answers to defts. interrog.	
/74	~~PRE-TRIAL CONFERENCE HELD BY~~ Mag. Raby	
/74	~~PRE-TRIAL CONFERENCE HELD BY~~ Mag. Raby	
/74	Filed defts. answers to pltfs. interrog	
29/74	Filed consent order changing attys. Haight, Gardner, Finn & Poor now represents Pltf & deft. So ordered, Weinfeld, J.	
3/74	~~PRE-TRIAL CONFERENCE HELD BY~~ Mag. Raby	
10/73	~~PRE-TRIAL~~ CONFERENCE HELD BY Mag. Raby	
Jul 10-74	Filed defts. affdt. and notice of motion compelling pltf. to appear in 2 weeks for a physical exam. before Dr. Vincnet Lodico and that pltf. should pay the sum of $250 as reasonable expenses, ret. on: July 16, 1974.	
Jul 10-74	Filed defts. memorandum of law, in support of above.	
ul-15-74	Case re-opened - was closed in error. ---	

--- continued page 3 --

Leroy Pores vs. Maritime Overseas
72 CIV 1600 page 3.

Levet, J. A3
Judge Weinfeld

DATE	PROCEEDINGS
Jul-17-74	Filed stip. and order that deft's motion is adj. to 7-23-74 -- Weinfeld, J.
Jul 26-74	Filed pltfs. affdt. of Harvey Goldstein in oppostion to defts. motion compelling pltf. to appear at the office of Dr. Lodico for a physical exam.
Jul 26-74	Filed memo end. on defts. motion dated July 10,1974 compelling pltf. to appear within 2 weeks for a physical---Pltf. shall present himself for a physical exam. to be conducted by a doctor specified by the deft., in Rm.601 of the USDC, on July 30,1974 at 10am. Soordered,Weinfeld,J.
7-25-74	PRE-TRIAL CONFERENCE HELD BY Mag. Roby
Sep.4-74	Filed pltfs. pre-trial order.So ordered, Weinfeld,J. (consented to).
Dec.30-74	Action reassigned to Levet,J.
Dec.31-74	Filed deft's notice to take deposition of A.Antinou. Subp. Issued.
Jan.3-75	BEFORE LEVET,J. PRE-TRIAL CONFERENCE HELD.
Jan.10-75	Filed deft's notice to take deposition of George Schmidt.
Apr.07-75	Before Levet,J. Jury trial begun.
Apr.08-75	Trial continued.
Apr.09-75	" "
Apr.10-75	" "
Apr.14-75	" "
Apr.15-75	" "
Apr.16-75	" " & concluded. Jury verdict for pltff. for total of $25,000.00
05-15-75	Filed Affdvt. of J.T.Stearns for deft in reply to assertion on pg 11 of affdvt.
5-23-75	~~Filed transcript of record of proceedings, dated~~ 4/7-8-9-10/75
5-23-75	Filed transcript of record of proceedings, dated 4/14-15-16/75
05-22-75	Filed OPINION# 42459. Consequently, court feels bound under rules of law pertaining to new trials to deny motion of deft.Levet,J(mn)
05-28-75	Filed Judgment #75,477: Ordered that pltff. have judgment against deft. in the amount of $25,000, with costs. Levet,J. Judgment Ent. Clerk. m/n Ent. 5-29-75.
06-13-75	Filed deft's notice of motion granting a new trial ret.6-19-75.
06-13-75	Filed deft's memorandum in support of motion for a new trial.
06-13-75	Filed affidavit of H.Goldstein in opposition to deft's motion for re-argument.
06-13-75	Filed affidavit of J.T. Stearns in opposition to deft's motion.
06-13-75	Filed Memo-endorsed on deft's motion for a new trial: Deft's motion for reargument, is denied. So ordered. Levet,J. m/n
06-19-75	Filed deft's notice of appeal to the USCA from judgment ent.5-28-75. Mailed copy to Fuchsberg & Fuchsberg.
06-19-75	Filed Supersedeas Bond undertaking on appeal from judgment directing payment of money in the sum of $250.00, by Insurance Co. of North America.
05-07-75	Filed deft's trial memorandum.
05-07-75	Filed deft's preliminary requests to charge respectfully submitted.
05-07-75	Filed affidavit of Engagement by Harvey Goldstein.
05-07-75	Filed pltff's request to charge on the maintenance & cure.
05-07-75	Filed pltff's requests to charge.
05-07-75	Filed pltff's memorandum Re: Liability.
05-07-75	Filed affidavit of J.T. Stearns Re: deposition of witness.
05-07-75	Filed deft's memorandum in further support of its motion for a directe verdict.

DATE	PROCEEDINGS PAGE #4
7-08-75	Filed affidavit of J.T. Stearns in support of deft's motion for judgment.
7-08-75	Filed pltff's brief in opposition to deft's motion for judgment.
7-08-75	Filed affidavit of H.Goldstein in reply to reply affidavit of J.T.Stearns.
7-08-75	Filed affidavit of H.Goldstein in answer to deft's affidavit for judgment.
07-09-75	Filed notice that original record on appeal has been certified & transmit to the U.S.C. of appeals
05-07-75	Filed deposition of pltff taken on 8-16-75. m/n
05-07-75	Filed " " Angelo Antoniou taken on 1-2-75. "
05-07-75	Filed " " George Schmidt " " 1-21-75. "
7/17/75	Filed transcript of record of proceedings, dated 4/7,8,9,10/75
07-25-7	Filed transcript of record of proceedings, dated 4/14,15,16/75
08-20-75	Filed Notice that record on appeal certified and transmitted to USCA.

JTS:PL:5 02-5505

A5

Fee Pd 5⁰⁰

FILE COPY
HAIGHT, GARDNER, POOR & HAVENS
ONE STATE STREET PLAZA NEW YORK
6/19/75
ENTERED
R. E. D.
BY:

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

LEROY PORSS,

Plaintiff,

- against -

MARITIME OVERSEAS CORPORATION,

Defendant.

----------x

NOTICE OF APPEAL

72 Civ. 1600
(RJL)

FILED
JUN 19 1975
U.S. DISTRICT COURT
S. D. OF N.Y.

S I R S :

PLEASE TAKE NOTICE that the defendant does hereby appeal from the judgment entered May 28, 1975 in favor of plaintiff against the defendant, and from each and every part thereof.

Dated: New York, New York
June 18, 1975

HAIGHT, GARDNER, POOR & HAVENS
Attorneys for Defendant

By Leroy S Corsa
A Member of the Firm
One State Street Plaza
New York, New York 10004

TO:

FUCHSBERG & FUCHSBERG, ESQS.
Attorneys for Plaintiff
250 Broadway
New York, N. Y. 10007

JUDGMENT APPEALED FROM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- X

LEROY PORSS

Plaintiff,

-against-

MARITIME OVERSEAS CORPORATION

Defendant

- -Y

The issues in the above entitled action having been brought on regularly for trial, before the Honorable Richard H. Levet, United States District Judge, and a Jury, on April 7, 8, 9, 10, 14, 15 and 16, 1975, and the Court having submitted the attached special questions to the jury, and the jury having answered the said questions, and the jury having returned a verdict in favor of the plaintiff, it is,

ORDERED, ADJUDGED and DECREED that plaintiff LEROY PORSS have judgment against defendant MARITIME OVERSEAS CORP., in the amount of $25,000 with costs.

Dated: New York, N.Y.
May 28, 1975

s/Raymond F. Burgher
Clerk

APPROVED
s/Richard H. Leset
U.S.D.J.

ORDER

At a Special Term of the United States District Court for the Southern District of New York, held in the United States Court House in the Borough of Manhattan, City of New York on the seventh day of March, in the year of our Lord One Thousand Nine Hundred and Seventy Five.

PRESENT:

HONORABLE RICHARD H. LEVET

United States District Judge

- - - - - - - - X

SAME TITLE Docket No. 75 Civ. 1600

- - - - - - - - X

Now comes the Plaintiff by Fuchsberg & Fuchsberg, by Harvey Goldstein and moves the trial of this cause. Likewise comes the Defendant by Haight, Gardner, Poor and Havens, by Joseph T. Stearns.

Thereupon a Jury is duly empaneled and sworn, and the cause proceeds to Trial.

April 7, 1975, April 8, 1975, Trial continued.

April 9, 1975, trial continued

April 10, 1975, trial continued, both sides rest.

April 14, 1975, trial continued, summations, Judge charge, 1:45-3p.m.

April 15, 1975, Jurors continue deliberations.

April 16, 1975 jurors continue deliberations and reach a verdict at 12 Noon. Verdict in favor of plaintiff

for a total of $25,000.00. Please see special verdict form attached. Judge orders Clerk to enter a judgment for $25,000.00 against the defendant and in favor of the plaintiff. So ordered.

Levet, J.

Issue of maintenance and *** is settled by stipulation of both attorneys.

Clerk

James J. Farley

SPECIAL VERDICT FORM

- - - - - - - - X

SAME TITLE

- - - - - - - - X

PART ONE SPECIAL VERDICT: LIABILITY

1. Has plaintiff proved by a fair preponderance of the credible evidence that defendant shipping company was negligent in failing to provide sufficient number of seamen to carry out the operation of moving Butterworthing equipment on board the S.S. OVERSEAS ALEUTIAN on June 8, 1971 and that such negligence was a proximate cause, in whole or in part, of an accident sustained by plaintiff on June 8, 1971? NO

Go on to question 2.

2. Has plaintiff proved by a fair preponderance of the credible evidence that defendant was negligent because the other crewmen with whom plaintiff was working in removing the Butterworthing equipment negligently let go of the hose and line and that such negligence was a proximate cause, in whole or in part, of an accident sustained by plaintiff on board the S.S. OVERSEAS ALEUTIAN on June 8, 1971?

YES

Go on to question 3.

3. Has plaintiff proved by a fair preponderance of the credible evidence that the S.S. OVERSEAS ALEUTIAN was unseaworthy because an insufficient number of seamen were

SPECIAL VERDICT FORM

provided to carry out the operation of moving Butterworthing equipment on June 8, 1971 and that such unseaworthiness was a proximate cause, in whole or in part, of an accident sustained by plaintiff on June 8, 1971?

NO

If your answer to any of questions 1, 2 or 3 is "YES', go on to question 4.

If your answers to each of questions 1, 2 and 3 is "NO", omit all further questions and sign the SPECIAL VERDICT on the last page.

4. Has defendant proved by a fair preponderance of the credible evidence that negligence on the part of the plaintiff contributed, in whole or in part, to an accident sustained by plaintiff on June 8, 1971?

NO

If your answer to question 4 is "YES", proceed to question 5.

If your answer to question 4 is "NO", omit question 5 and go on to PART TWO SPECIAL VERDICT: DAMAGES.

5. To what extent did plaintiff's own negligence contribute to the accident? (express in terms of a percentage)

_____%

Go on to PART TWO SPECIAL VERDICT: DAMAGES

PART TWO: SPECIAL VERDICT RE DAMAGES

1. (a) Has plaintiff proved by a fair preponde-

rance of the credible evidence that as a result of an accident on June 8, 1971 he sustained damages consisting of past pain, suffering and disability?

YES

If your answer to 1(a) is "No," proceed to 2(a).

If your answer to 1(a) is "yes," proceed to 1(b).

(b) To what award is plaintiff entitled for past pain, suffering and disability? $8500.00

Proceed to question 2.

2. (a) Has plaintiff proved by a fair preponderance of the credible evidence that as a result of an accident on June 8, 1971 he is reasonably certain to sustain damages consisting of future pain, suffering and disability?

NO

If your answer to 2(a) is "no," proceed to 3(a).

If your answer to 2(a) is "yes," proceed to 2(b).

2. (b) To what award is plaintiff entitled for future pain, suffering and disability which he is reasonably certain to sustain?

Proceed to question 3.

3. (a) Has plaintiff proved by a fair preponderance of the credible evidence that, as a result of the accident on June 8, 1971, he sustained damages consisting of past loss of wages? YES

3. (b) To what award, if any, is plaintiff

SPECIAL VERDICT FORM

entitled for past loss of wages? $16,500.00

Go on to question 4.

4. (a) Has plaintiff proved by a fair preponderance of the credible evidence that, as a result of the accident on June 8, 1971, he is reasonably certain to sustain damages consisting of future lost wages?

NO

(b) What is the number of years, if any, over which this loss is reasonably certain to be sustained?

(c) What is the average yearly value of this loss, if any, which is reasonably certain to be sustained?

SIGN SPECIAL VERDICT ON THE LAST PAGE

NOTICE OF MOTION

- - - - - - - - X

SAME TITLE 72 Civ. 1600 REL

- - - - - - - - X

SIRS:

PLEASE TAKE NOTICE that the undersigned will move this Court upon the annexed memorandum of law for re-argument of the Court's decision denying defendant's post-trial motions pursuant to Rules 50 and 59, before the Honorable Richard H. Levet, to whom it is assigned for all purposes, at the Federal Courthouse, Foley Square, New York, N.Y., Room 2103 on the 19th day of June, 1975, at 10:00 o'clock in the fore noon of that day, and on re-argument defendant will move for an order granting a new trial in this case or judgment notwithstanding the jury's verdict in plaintiff's favor.

Dated: New York, N.Y.
June 6, 1975

HAIGHT, GARDNER, POOR & HAVENS
Attorneys for defendant

By s/
A Member of the Firm
One State Street Plaza
New York, N.Y. 10004

TO: FUCHSBERG & FUCHSBERG, ESQS.
Attorneys for Plaintiff
250 Broadway
New York, N.Y. 10007

MEMORANDUM
DECISION

- - - - - - - - X

SAME TITLE 72 Civil 1600

- - - - - - - - X

Defense counsel's claim as to the misconduct of plaintiff's counsel was considered in a prior post-trial motion for a new trial. Although the court did not condone the conduct of plaintiff's counsel as described in its decision of May 21, 1971, denying a motion for a new trial, the court held that any prejudicial effect of comments and conduct by plaintiff's counsel during the trial were immediately removed by curative instructions to the jury. I see no merit or relevance in defendant's present contention that plaintiff's counsel's conduct was motivated by consideration of other matters which he had pending before this court. In fact, at the time of trial of this case and to the present, counsel for plaintiff has had no other matters before the undersigned for trial or otherwise.

Defendant's motion for reargument, therefore, is denied.

So ordered.

Dated: New York, N.Y.
June 13, 1975

s/Richard H. Levet
United States District Judge

Filed June 13, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

LEROY PORSS,

Plaintiff,

-against-

MARITIME OVERSEAS CORP.,

Defendant.

----------X

72 Civ. 1600

OPPOSITION AFFIDAVIT

FILE COPY
HAIGHT, GARDNER POOR & HAVENS
ONE STATE STREET PLAZA NEW YORK
10 June 1975
ENTERED
R.E.
BY:

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

HARVEY GOLDSTEIN, being duly sworn, deposes and says:

I am Trial Counsel for the plaintiff in this matter and am fully familiar with the pleadings and proceedings heretofore had herein.

This affidavit is submitted in opposition to the defendant's motion for re-argument of the decision denying defendant's post-trial motions.

The Court requires no lengthy statement from me to reject out of hand the improper and untruc assertion by the defendant's attorney (he would not put it in an affidavit) tha the possible trial of another case weighed on the mind of the Court in this matter and that the Court was subjected to some kind of psychological intimidation.

In point of fact, and as the Court well knows, at all times that this matter was set down for a date certain for trial,

throughout the period of the trial and continuously to the present time, I have no other matters on the calendar of or assigned to Mr. Justice [illegible] for trial or otherwise.

WHEREFORE, I respectfully request that this motion for re-argument be granted, and for such other and further relief as seems just and proper.

HARVEY GOLDSTEIN

Sworn to before me, this

9th day of June, 1971.

FILE COPY
HAIGHT, GARDNER, POOR & HAVENS
ONE STATE STREET PLAZA NEW YORK
6/11/75
ENTERED
BY: RE NGH

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

LEROY PORSS,

Plaintiff,

- against -

MARITIME OVERSEAS CORP.,

Defendant.

----------x

AFFIDAVIT

72 Civ. 1600 RJH

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JOSEPH T. STEARNS, first being duly sworn, deposes and says:

1. I am an attorney-at-law associated with Haight, Gardner, Poor & Havens, attorneys for defendant. I submit this affidavit in response to that of Harvey Goldstein, sworn to June 9, 1975, in opposition to defendant's motion for re-argument and on re-argument for an order granting a new trial in this case.

2. The motion for re-argument was made in memorandum form because that manner of proceeding is required by the rule, which also does not provide for opposing papers unless ordered. However, in view of opposing counsel's statement in opposing affidavit, which can be charitably characterized as a suggestion that an affidavit would be more appropriate in the circumstances presented, we submit this affidavit for the purpose of explaining fully the situation, as we understand it.

3. We were informed by William Kimball, Esq. of the firm of Burlingham, Underwood & Lord that in

conversation with Mr. Goldstein during trial, Mr. Goldstein told Mr. Kimball, who was trying a case across the hall before Judge Lasker, that he had approached this court regarding recusal of this case and another, once assigned to Your Honor for trial. I am told further that the Court agreed to recuse the other assigned case, which, according to the conversation reported to me, was a more serious matter in the view of counsel for plaintiff, while this case was considered by Mr. Goldstein to be a "dog." In addition, I am told Mr. Goldstein expressed some pride in his discussion with Mr. Kimball in having succeeded in obtaining recusal of the other more serious matter, apparently without demonstration by plaintiff's counsel of any true legal reason.

4. In his affidavit Mr. Goldstein states that "at all times that this matter was set down for a date certain for trial" no other case was assigned to Your Honor. Our records reflect that we received notice of re-assignment of this case on January 8, 1975, some nine days after receiving notice of a pre-trial conference before this Court, which was scheduled for January 3, 1975. As the Court is aware, this case was tried in mid-April, and I am uncertain when a day certain was established in this case.

5. This issue is raised because the flagrant abuse of the court to which Mr. Goldstein stooped during trial is consistent with an intention to discourage its acceptance of future assignments of cases in Mr. Goldstein's care, which conduct may be further interpreted as an effort to

reinforce the court's reported decision to recuse the other matter.

JOSEPH T. STEARNS

Sworn to before me this

// day of June, 1975.

Notary Public

GEORGE J. D[illegible]
Notary Public, State [illegible]
No. 31-5[illegible]
Qualified in New York County
Commission Expires March 30, [illegible]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- -

(Levet)

#42459

LEROY PORSS,

Plaintiff,

-against-

MARITIME OVERSEAS CORPORATION,

Defendant.
- -

72 Civil 1600

MEMORANDUM AND ORDER ON MOTIONS BY DEFENDANT FOR JUDGMENT NOTWITHSTANDING THE VERDICT AND FOR A NEW TRIAL.

MAY 22 12 25 PM '75
S.D. OF N.Y.

LEVET, D. J.

This is a seaman's personal injury case brought pursuant to the Jones Act, 46 USC § 688, which was tried April 7 through 10 and April 14 through 16, 1975, at the close of which the jury returned a verdict for plaintiff. Special interrogatories as to liability were answered by the jury as follows:

"1. Has plaintiff proved by a fair preponderance of the credible evidence that defendant shipping company was negligent in failing to provide sufficient number of seamen to carry out the operation of moving Butterworthing equipment on board the S.S. OVERSEAS ALEUTIAN on June 8, 1971 and that such negligence was a proximate cause, in whole or in part, of an accident sustained by plaintiff on June 8, 1971?

Yes ___ No XX

"2. Has plaintiff proved by a fair preponderance of the credible evidence that defendant was negligent because the other

MICROFILM

crewmen with whom plaintiff was working in removing the Butterworthing equipment negligently let go of the hose and line and that such negligence was a proximate cause, in whole or in part, of an accident sustained by plaintiff on board the S.S. OVERSEAS ALEUTIAN on June 8, 1971?

XX Yes ____ No

"3. Has plaintiff proved by a fair preponderance of the credible evidence that the S.S. OVERSEAS ALEUTIAN was unseaworthy because an insufficient number of seamen were provided to carry out the operation of moving Butterworthing equipment on June 8, 1971 and that such unseaworthiness was a proximate cause, in whole or in part, of an accident sustained by plaintiff on June 8, 1971?

____ Yes XX No

"4. Has defendant proved by a fair preponderance of the credible evidence that negligence on the part of the plaintiff contributed, in whole or in part, to an accident sustained by plaintiff on June 8, 1971?

____ Yes XX No"

Special interrogatories as to damages were answered by the jury as follows:

"1. (a) Has plaintiff proved by a fair preponderance of the credible evidence that as a result of an accident on June 8, 1971 he sustained damages consisting of past pain, suffering and disability?

XX Yes ____ No

If your answer to 1(a) is "No," proceed to 2(a).
If your answer to 1(a) is "Yes," proceed to 1(b).

"1. (b) To what award is plaintiff entitled for past pain, suffering and disability? $ 8,500

"3. (a) Has plaintiff proved by a fair preponderance of the credible evidence that, as a result of the accident on June 8, 1971, he sustained damages consisting of past loss of wages?

XX Yes ____ No

"3. (b) To what award, if any, is plaintiff entitled for past loss of wages? $ 16,500"

In the charge to the jury the court summarized the facts as indicated by the proof. Plaintiff was an able-bodied seaman who, with two fellow crew members, able-bodied seaman George Schmidt and deck maintenance man Frank Wherrity, were engaged in cleaning tanks by an operation called "Butterworthing."

"Words and Phrases," Volume 5A, page 780, defines "Butterworthing" as follows:

> "'Butterworthing' takes its name from the Butterworth machine which is lowered into the tanks after the cargo is discharged. These machines have two rotating nozzles which pump hot sea water, heated just under steam temperature, into the tanks. After the tanks have cooled off, the crew is sent into the tanks to free the scale, hose down the tanks and clean them of sludge and the residue of the scale, etc."

The Butterworthing machine is placed into the tanks through 18 inch holes in the deck called Butterworthing holes. The machine is raised and lowered by means of a hose and rope attached to it.

At the time of the alleged accident the three men were raising the machine from the bottom of a tank which was 35 feet deep. George Schmidt stood at the edge of the Butterworthing hole and grasped both the hose and the rope. Plaintiff stood behind and to Schmidt's left pulling the hose, while Wherrity stood behind and to Schmidt's right pulling the rope. Plaintiff testified he was injured when both Schmidt and Wherrity suddenly let go of the hose and rope and plaintiff was pulled forward and injured his back.

Plaintiff's theory of liability, as indicated by the aforementioned interrogatories, was that defendant was negligent and the ship unseaworthy for failing to provide a sufficient number of seamen to carry out the Butterworthing operation and, alternatively, that defendant was negligent because Schmidt and Wherrity negligently let

go of the hose and rope. The jury returned a verdict in favor of defendant on the claims of unseaworthiness and negligence for failure to provide a sufficient number of men to perform the operation, and a verdict in favor of plaintiff on the claim of negligence based on the negligence of plaintiff's fellow crew members.

Defendant now moves, pursuant to Rule 50(b) of the Federal Rules of Civil Procedure, for judgment notwithstanding the verdict or, in the alternative, for a new trial under Rule 59 of the Federal Rules of Civil Procedure.

MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT

The basis of defendant's motion for judgment notwithstanding the verdict is, defendant claims, the complete failure of the evidence to show (1) that the alleged accident ever occurred; (2) that the ship was unseaworthy; or (3) that defendant was negligent. The jury found in favor of defendant on the issues of unseaworthiness and negligence with respect to the alleged failure to provide a sufficient number of men to perform the Butterworthing operation but found in favor of plaintiff on the issue of the negligence of his fellow crewmen. Only the latter issue, therefore, will be considered for the purposes of this motion.

A motion for judgment notwithstanding the verdict may not be granted unless as a matter of law it is found that the successful party failed to present a case for the jury and a verdict in favor of the opposite party should have been directed at the trial. Neville Chemical Co. v. Union Carbide Corp., 422 F. 2d 1205 (3rd Cir. 1970), cert. denied 400 U.S. 826. In determining a motion for judgment notwithstanding the verdict the question is not whether the verdict is against the weight of the evidence, this being for the jury; only where there is no evidence upon which reasonable men could reach a verdict may the trial court set a verdict aside and enter judgment for the adverse party. National Equipment Rental, Ltd. v. Stanley, 177 F. Supp. 583 (S.D.N.Y. 1959), aff'd 283 F. 2d 600 (2d Cir. 1959). The only issue to be resolved by the court in determining defendant's right to such relief, therefore, is whether the evidence produced on trial when viewed in the light most favorable to plaintiff, together with all reasonable inferences to be drawn therefrom, furnishes any substantial evidence to support the jury's verdict. White Pine Copper Co. v. Continental Ins. Co., 166 F. Supp. 148 (D.C. Mich. 1958).

Plaintiff testified to the facts leading up to the alleged accident and defendant, through the deposition testimony of Schmidt and the bosun, Antiniou, generally substantiated this part of plaintiff's testimony; however, the testimony is contradictory as to the actual occurrence of the alleged accident and the alleged negligent conduct

of Schmidt and Wherrity. Plaintiff claims they dropped the hose and rope and he was injured. Schmidt testified that the accident never occurred. A statement by Wherrity, taken by defendant, was objected to by defendant as hearsay and was excluded at trial. Clearly, the only question presented to the jury was one of credibility of the witnesses and the jury decided this question in favor of plaintiff.

Defendant's motion for judgment notwithstanding the verdict, therefore, is denied.

MOTION FOR NEW TRIAL ON THE GROUND THAT THE VERDICT IS CONTRARY TO THE WEIGHT OF THE EVIDENCE

Defendant moves for a new trial on two grounds, namely (a) the verdict was contrary to the clear weight of the evidence; and (b) the misconduct of plaintiff's lawyer during trial was such as to require a new trial.

A motion to set aside the verdict and for a new trial should be granted if the verdict is contrary to the clear weight of the evidence. Kaufman v. Atlantic Greyhound Corp., 41 F. Supp. 252 (D.C.W.Va. 1941). A motion for new trial on the ground that the verdict was contrary to the weight of the evidence requires a trial judge to evaluate all significant evidence and then to exercise his sound discretion as to whether the jury disregarded the clear weight of the evidence so

that a new trial is necessary to prevent injustice; in contrast thereto the aforementioned motion for judgment notwithstanding the verdict will only be granted when there is no rational basis for the verdict when viewed most favorably to the prevailing party. Zegan v. Central R. Co., 266 F. 2d 101 (3rd Cir. 1959).

The same rationale for denying defendant's motion for judgment notwithstanding the verdict dictates that defendant's motion for a new trial on the ground that the verdict was contrary to the clear weight of the evidence must also be denied. The evidence in support of the verdict must be conceded the greatest probative force to which it is fairly entitled, and only when it fails is a new trial justified. United States v. 3969.59 Acres of Land, 56 F. Supp. 831 (D.C.Idaho 1944). The evidence adduced at trial on the issue of defendant's negligence amounts, in substance, to a question of the credibility of the witnesses. This question is uniquely within the province of the jury and for the court to dispute the jury's finding thereon would be an abuse of discretion.

Counsel for defendant also argues that the jury's verdict was excessive for both pain and suffering and lost wages. In view of the testimony that plaintiff's earnings were $900 per month prior to his injury in 1971, the jury's verdict of $16,500 for past lost wages is not excessive. Similarly, the verdict of $8,500 for past pain and

suffering is not excessive in light of the jury's finding that the alleged injury actually occurred.

MOTION FOR NEW TRIAL ON THE BASIS OF TRIAL COUNSEL'S MISCONDUCT

I turn now to the primary argument set forth in the memorandum of defense counsel in support of his motion for a new trial, namely, that the conduct of plaintiff's lawyer during the trial was such as to require a new trial.

The law is that only if the remarks or conduct of counsel are clearly prejudicial, or where the court does not correct the jury if required by the circumstances, should a motion for a new trial be granted. Roy v. Employers Mutual Casualty Co., 368 F. 2d 902 (5th Cir. 1966); Wright v. Charles Pfizer & Co., 253 F. Supp. 811 (D.S.C. 1966); DeVito v. United Air Lines Inc., 98 F. Supp. 88 (E.D.N.Y. 1951). Only where it is required should there be a new trial. Siegel v. First Pennsylvania Baking and Trust Co., 248 F. Supp. 249 (E.D.Pa. 1965). Only where the verdict is so contrary to inherent justice should a new trial be granted even where it was contended that the general manner of conduct of the attorney in making objections, insinuations and voluntary statements and in interrupting witnesses, the court, and counsel without adequate restraint and timely corrective action by the

court infected the trial with confusion and unfounded implications. Williams v. National Surety Corp., 257 F.2d 771 (5th Cir. 1958).

Granting of a new trial is justified where counsel's argument to the jury contains assertions that are not true and mislead the jury. Myers v. George, 271 F. 2d 168 (8th Cir. 1959).

Defense counsel contends that the attorney for plaintiff, by improper tactics, sought to make impossible proper supervision by the court. Defense counsel refers to episodes during trial which, so defendant claims, show that plaintiff's counsel pitted himself against the court by suggesting to the jury that the court was biased, and associated such alleged bias with defendant's defense of this case.

Specifically, defense counsel refers to a number of episodes which occurred in the presence of the jury.

During direct examination of defendant's expert medical witness by Mr. Stearns (counsel for defendant), Mr. Goldstein (counsel for plaintiff) objected to testimony concerning plaintiff's past history of gonorrhea. The following colloquy took place:

MR. GOLDSTEIN: If your Honor please, I object to this onthe ground that your Honor has previously ruled on this subject and Mr. Stearns has deliberately thrown this matter before the jury.

THE COURT: I don't recall specifically ruling on this but I am going to sustain the objection.

MR. GOLDSTEIN: Mr. Stearns, I hope you are satisfied. You struggled for four days to get that in.

THE COURT: Now, no comment.

MR. GOLDSTEIN: And you finally got it in.

THE COURT: You sit down.

MR. GOLDSTEIN: If your Honor please, I ask for a mistrial on the ground that Mr. Stearns deliberately disobeyed your Honor. Your Honor told him, in your Honor's robing room, that it was not to be put in.

MR. STEARNS: That is not the case. There was no such discussion.

THE COURT: That is not so. I deny your motion.

Now continue and complete your examination, Counselor.

MR. GOLDSTEIN: If your Honor please, I object until we have this out once and for all.

THE COURT: There is no further matter to do with. I sustained your objection and I denied your motion. Now will you please continue.

Q Doctor, I have also asked you to consider --

THE COURT: And the jurors may and should -- I am asking you to disregard these comments by counsel.

MR. GOLDSTEIN: That is laughable. That is laughable.

THE COURT: Will you go out and laugh about it then? And I again say to --

MR. GOLDSTEIN: It is one of the ugliest things I have ever seen. Mr. Stearns doing a thing like that is one of the --

THE COURT: I want no more comment from you, sir.

MR. GOLDSTEIN: Your Honor will get comment from me to protect my client. You will get it any time. That is what attorneys are supposed to do.

THE COURT: Will you come into the robing room, gentlemen, with the reporter?

Following a brief discussion in the robing room, the court instructed the jury to disregard the question concerning plaintiff's history of gonorrhea.

As part of plaintiff's case, counsel for plaintiff read from George Schmidt's deposition. Mr. Stearns objected to the reading of certain portions thereof, in which Schmidt had been asked about the presence of water on the deck, on the ground there was no contention that Schmidt or Wherrity had slipped. The following colloquy took place:

THE COURT: Tell me where there is a claim of slipping on the deck. If so, show it to me.

Do you find anything in the complaint?

MR. GOLDSTEIN: No, sir, the complaint is in the usual general terms that do not describe any injury.

THE COURT: All right, there is nothing in it about slipping.

MR. GOLDSTEIN: And the complaint doesn't have to have it, Judge, as your Honor well knows.

THE COURT: I beg your pardon, sir. Is there anything in the pre-trial order?

MR. GOLDSTEIN: Yes, sir.

THE COURT: Let's see that. Mark it, will you, and let me see it. All I am trying to do is see if there was notice given somewhere.

Where does it say anything about -- underline anything about the deck, will you please?

MR. GOLDSTEIN: That the manner and method of the operation was not safe. The failure to determine the manner and the method of the operation was safe.

THE COURT: Well, I will sustain the objection.

MR. GOLDSTEIN: Is your Honor denying me the right to prove these things?

THE COURT: I do, this particular thing.

MR. GOLDSTEIN: This is the defendant's witness, not my witness.

MR. STEARNS: Your Honor, can I --

THE COURT: I don't care whose witness it is.

MR. STEARNS: Can I read the plaintiff's deposition on the question of slipping?

THE COURT: Not yet. There is no claim here about it.

MR. GOLDSTEIN: There is no claim that Mr. Wherrity — you tell me there is no claim. Do you want me to answer you without giving me some phase that I can't answer because it doesn't show on the record. Does your Honor wish me to answer you or do you just want me to keep quiet and allow you to destroy a lawsuit?

THE COURT: Don't ask such foolish questions.

MR. GOLDSTEIN: They are not foolish, Judge. They are not foolish. I have been here three days and I am watching what's going on.

THE COURT: So am I.

MR. GOLDSTEIN: Yes, I know, Judge. Your track record speaks for itself.

THE COURT: Thank you, and will you disregard that, members of the jury. My track record, so-called, is none of anybody's business here.

MR. GOLDSTEIN: If your Honor please, I move for a mistrial.

THE COURT: Denied.

The summation by counsel for plaintiff began with the following colloquy:

THE COURT: Now, Mr. Goldstein, for the plaintiff.

MR. GOLDSTEIN: Thank you, your Honor.

Good morning, ladies and gentlemen. We have had a very, very trying week. You know that it has not been a quiet week; it has not been a week that you would normally expect to find in a court house, but you know also that every man is entitled to an attorney to help him and to protect him. That is the right of every one of us, both you, me and Mr. Porss, and if I felt at any time -- and I did, and you know it -- that in some way the matter was not being handled evenhandedly, giving the plaintiff --

THE COURT: You may disregard that, members of the jury, and you will continue, Mr. Goldstein, without such allusions.

MR. GOLDSTEIN: Then you know it is my duty to act as I see fit for the best purposes of my client, and you would want the same.

Now, if I have in any way offended anybody while I strove, during the course of the week, to protect Mr. Porss' rights, for that I am sorry, because you should not have had to be put to that burden and to see what went on this last week. However, these are the things that existed.

You have your opinions by this time about this trial, and there is very, very little that I can say to you in terms of the way the case was tried that will --

THE COURT: You may disregard that. Please go on with your argument on this summation.

Further along in his summation, counsel for plaintiff attempted to discuss the aforementioned statement of Wherrity, the contents of which had been excluded during trial. The following colloquy took place:

MR. GOLDSTEIN: And do you recall there was a statement by Mr. Wherrity, which I wasn't allowed to get in but which you know was prepared by --

MR. STEARNS: I object.

THE COURT: You will disregard that. Only the admitted evidence is to be considered by you.

Mr. Goldstein, you will not refer to Wherrity's statement, which was not admitted.

MR. GOLDSTEIN: I am not talking about referring to it. I am not talking about reading it. I am talking about the fact that there is such a statement, and to that I can refer, because that is in the answers to the interrogatories.

THE COURT: I instruct the jury not to take any notice of this statement.

Now, you go ahead.

MR. GOLDSTEIN: The statement is there. I cannot read it to you. I cannot get it in. I wanted to. I cannot.

MR. STEARNS: Objection, your Honor, for the record of this trial. This is an absolutely impudent disregard of the Court's rules.

THE COURT: The Court rules that there may be an appeal of the Court's rulings, but at this time those rulings must bind the parties, and they bind you.

MR. GOLDSTEIN: So that there should be no question about it, there will be an appeal.

THE COURT: Disregard that.

That is absolutely out of order, counsel. You proceed and abstain from these side remarks, so to speak.

Counsel for defendant contends that this attempt by his adversary to call the jury's attention to excluded evidence was highly prejudicial because it raised the inference that Wherrity's statement would corroborate plaintiff's testimony. However, the court immediately instructed the jury to disregard the excluded evidence and, in fact, the contents of the statement were never disclosed to the jury. The fact that defendant had taken a statement from Wherrity had been disclosed to the jury during the course of the trial, and properly so. I find no merit in this contention of counsel for defendant.

This court in no way wishes to condone the conduct of plaintiff's lawyer during the trial of this case before a jury. On a number of occasions his intemperate statements, which I believe were undignified and discourteous to either defense counsel or to the court are not to be lightly taken. See Van Iderstine Company v. RGJ Contracting Co., Inc., 480 F. 2d 454 (2d Cir. 1973). In this case Chief Judge Kaufman wrote on page 455:

Canon 7 of the Code of Professional Responsibility sets forth the elementary maxim that "A lawyer should represent a client zealously within the bounds of the law." Disciplinary Rule 7-106 (Trial Conduct) of the Canons, however, provides that

> (C) In appearing in his professional capacity before a tribunal, a lawyer shall not:
>
> (6) Engage in undignified or discourteous conduct which is degrading to a tribunal.

Moreover, Ethical Consideration 7-37 provides:

> In adversary proceedings, clients are litigants and though ill feeling may exist between clients, such ill feelings should not influence a lawyer in his conduct, attitude or demeanor towards opposing lawyers. A lawyer should not make unfair or derogatory personal reference to opposing counsel. Harunguing and offensive tactics by lawyers interfere with the orderly administration of justice and have no proper place in our legal system.

As a matter of fact, when each of these episodes arose, the court repeatedly took pains to direct the jury not to consider the comments by plaintiff's counsel and repeatedly admonished him for their utterance. The presumption is that jurors follow instructions. In several instances plaintiff's counsel stated that he must say so-and-so and so-and-so in support of his client's rights. It is obvious from the opinion of Chief Judge Kaufman above quoted and from fundamental Canons of Ethics that the Canon does not warrant the conduct of plaintiff's lawyer because of any such misguided basis as suggested.

However, the court has considered the motion by defendant to set aside the verdict and order a new trial and in the course of this

consideration has considered the testimony and proof adduced together with the controlling factors necessary in determination of that motion.

The granting or refusing of a new trial rests entirely within the sound discretion of the trial court. Campbell v. American Foreign S.S. Corp., 116 F. 2d 926 (2d Cir. 1941), cert. denied 313 U.S. 573.

This court finds, in the exercise of its discretion, that any prejudicial effect of the remarks and conduct of plaintiff's counsel were immediately removed by curative instructions to the jury to disregard said remarks and conduct. See Roy v. Employers Mutual Casualty Co., supra.

Consequently, the court feels bound under the rules of law pertaining to new trials to deny the motion of defendant.

So ordered.

Dated: New York, N.Y.
May 21, 1975.

Richard H. Levet
United States District Judge

FILE COPY
HAIGHT, GARDNER, POOR & HAVENS
ONE STATE STREET PLAZA NEW YORK
20 May 1975
ENTERED
R. E.
BY:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

LEROY PORSS,

Plaintiff,

-against-

MARITIME OVERSEAS CORPORATION,

Defendant.

----------X

AFFIDAVIT

72 Civ. 1600
(RHL)

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

HARVEY GOLDSTEIN, being duly sworn, deposes and says:

I am an attorney associated with Fuchsberg & Fuchsberg, attorneys for the plaintiff and am fully familiar with the pleadings and proceedings heretofore had herein.

This affidavit is submitted in reply to the reply affidavit of Joseph T. Stearns, trial counsel for the defendant in this matter.

Mr. Stearns' short reply affidavit, without in any way answering the repeated suggestions in my answering affidavit and brief, is clear indication that he more than slightly concurs in my thought that the issue of credibility was the crux of the entire trial.

However, Mr. Stearns conveniently forgets that there is a major difference between reminding the jury of evidence which pointed out that a statement by an employee did exist and a full reading of that statement after the Court had declined to

admit it into evidence.

My references to the statement were nothing more than the jury already knew from my reading of the interrogatories and answers of the defendant, all done without objection on the part of the defendant.

Mr. Stearns attempted to get the statement into evidence after the trial ended. The Court felt, as did I, that placing the statement into evidence at that point after the end of the trial, would highlight it far out of its importance. The statement had portions that were favorable to the plaintiff as well as parts favorable to the defendant. At the time that the answers to interrogatories were read the statement should have been presented to the jury where it would not have received undue examination. That could not be said were the trial specifically re-opened for the express purpose of admitting the statement after the close of the evidence. If that difference is not clear by this time, I cannot brighten the image.

Suffice to say that the statement might well have resulted in a verdict in plaintiff's favor on the questions of insufficient numbers of crewmen. At this time we have no way of knowing.

And at this time I am satisfied that the jury's verdict in plaintiff's favor was based upon its belief in the plaintiff and its disbelief of the defendant's other employees.

HARVEY GOLDSTEIN

Sworn to before me, this
16 day of May, 1975.

JAMES R. GOTTLIEB
Notary Public, State of New York
Qual. N. Y. County - No. 31-1520055
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

FILE COPY
HAIGHT, GARDNER, POOR & HAVENS
ONE STATE STREET PLAZA NEW YORK
ENTERED
BY:

LEROY PORSS,

Plaintiff,

- against -

MARITIME OVERSEAS CORPORATION,

Defendant.

AFFIDAVIT

72 Civ. 1600
(RHL)

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JOSEPH T. STEARNS, first being duly sworn, deposes and says:

1. I am an attorney-at-law associated with Haight, Gardner, Poor & Havens, attorneys for defendant and trial counsel in this matter. I am fully familiar with the pleadings and all prior proceedings had herein.

2. I submit this affidavit in reply to the attorney for plaintiff, Harvey Goldstein, and is sworn to the 2nd day of May, 1975, particularly in reply to the assertion which appears on page 11 in said affidavit:

> "After the evidence was introduced and both sides had rested, and both sides had summed up, the defendant's attorney changed his mind and sought to introduce the very same statement. As is to be expected, the moving affidavit omits all of the above, omits that the trial had ended except for the charge, omits that the introduction of the statement at that late time would have given it an importance out of reality, unfair and prejudicial to the parties if placed in at that time."

3. By asserting that the offer of the statement by the attorney for defendant would have given it importa

out of reality, unfair and prejudicial to the plaintiff because offered after the close of evidence, the attorney for plaintiff t citly agrees that his comments to the jury regarding the statement, and his alleged desire to read it to the jury, had the highly prejudicial effect about which we complain on behalf of the defendant. Obviously, the last minute reference, repeated reference, and second repeated reference to the statement, accompanied by the attorney's representation to the jury that he wished to read it, had the highly prejudicial effect that the attorney now says the admission of the statement subsequently would have had. In fact, the statement was offered out of necessity to cure the prejudice created by the repeated reference to this statement, despite the court's admonition. In his affidavit Mr. Goldstein clearly explains the importance of the impression he created in the jury's minds by suggesting that the defendant wished to withhold important evidence which it was further suggested would have corroborated plaintiff's testimony.

s/
JOSEPH T. STEARNS

Sworn to before me this
15th day of May, 1975.

s/
Notary Public

(Signature)

PAULETTE W. JAMES
Notary Public, State of New York
No. 24-4600737
Qualified in Kings County
Cert. filed with New York Co. Clerk
Term Expires March 30, 1976

FILE COPY
HAIGHT, GARDNER, POOR & HAVENS
ONE STATE STREET PLAZA NEW YORK
5/5/75
ENTERED
BY: R.E. N.G.H.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

LEROY PORSS,

Plaintiff,

-against-

MARITIME OVERSEAS CORPORATION,

Defendant.

----------X

72 Civ. 1600
(RHL)

AFFIDAVIT

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

HARVEY GOLDSTEIN, being duly sworn, deposes and says:

I am an attorney associated with the firm of Fuchsberg & Fuchsberg, attorneys for the plaintiff herein.

I am trial counsel in this matter, and as such am fully familiar with all of the facts and circumstances hereto and with all the pleadings and proceedings heretofore had herein.

This affidavit is submitted in answer to defendant's affidavit for judgment notwithstanding the verdict pursuant to Rule 50(b) FRCP and for a new trial pursuant to Rule 59.

Although the defendant ordered the transcript of the trial minutes immediately after the jury's verdict and had ten days to move, with the plaintiff having five days to answer, the defendant has not afforded me the common courtesy of photostating for my use a copy of the transcript. I, therefore, cannot answer other than by memory of the trial proceedings, now

almost three weeks ago. Nevertheless, the verdict for the plaintiff determined what the defendant's attorney repeatedly represented was a question of credibility between the plaintiff and the witnesses for the defendant. The plaintiff's version of the circumstances was believed and the defendant's version of the accident and the plaintiff's injuries was not.

The special verdict established that the defendant was liable because one or more of its employees negligently failed to properly do his work, proximately causing the plaintiff's accident and injuries in damages for $8,500.00 for pain and suffering and for $16,500.00 for lost wages from the date of the accident, June 8, 1971, to the date of the verdict, almost four years later. Whatever the defendant's attorney may describe as the circumstances from the defendant's viewpoint, it is nothing other than what the jury has already heard and rejected. The issue of credibility of the plaintiff, having been put onto center stage by the opening remarks of defendant's attorney, of what importance are his conclusions of the accident. The testimony of the plaintiff and the various witnesses established to the jury's satisfaction that the defendant's employees had not raised the machine, hose and line properly. As to the sufficiency of evidence to justify the verdict, the plaintiff testified that the center man allowed the gear to slip; the line man did not stop the line holding the hose by stepping on the line as a brake against the possibility of just what did happen. The jury had the right to determine that the failure of one or both of them to do their job properly:

that the center man cradled and did not grip the hose, that it was uncontroverted that the line man did not brake the line with his foot, all added up to the failure of the defendant's employees to use reasonable care to raise the hose, that they negligently let go of the hose and line, proximately causing the accident.

Attempts of the defendant's attorney to define and limit the plaintiff's case has no weight at this time when the plaintiff's case presented an issue of fact, as the Court found on the prior motions, predicated upon the failure to use due care to properly raise the hose. The special verdict by the jury agreed that the defendant did not. Defendant's point of view of the circumstances is meaningless in this motion. The only question is whether there was sufficient credible evidence to account for the verdict. There was!

On Page 7 of the moving affidavit, defendant's attorney makes some incredible statements of what he views as the evidence. Needless to say, I do not agree. More importantly, the jury obviously did not. All the accusations of lies, false concealing of facts, forgetfulness, misrepresentation, etc., have no place in this motion where the question is whether the evidence sufficiently presented a question of fact for the jury's determination. The issue of sufficient number of crewman was held in defendant's favor and is of no importance here. I accept that verdict against the plaintiff, both on negligence and unseaworthiness.

However, that verdict, rejecting the contention that there were insufficient numbers of men working, necessarily said that three men were able to lift the hose and machine, and that if it was let go, that there was negligence in permitting it to occur. That was the claim, and the jury had the right to so decide, especially since the testimony clearly spelled out the overwhelming probability of the presence of large amounts of water in the hose, bringing the weight being raised to 250, 300 pounds.

The plaintiff testified that the hose and machine weighted 300, 500 pounds. At another time, 300, maybe 250 pounds during the pick-up. As the defendant's attorney concedes on page 22 of his affidavit, that weight included the machine, the hose, "and the water". The bo'sun admitted that water should not be in the hose when it was being raised, but conceded that it often was (he said in small amounts). The jury had the right to determine that the presence of water in the hose when it was being raised at the time of the accident was overwhelming and didn't choose to believe that it was a gallon or so, but that the water in the hose brought the weight to the total poundage testified to by the plaintiff. It was a basic question of fact, now determined in the plaintiff's favor.

On the question of weight, the plaintiff was helping in the very lifting, when the defendant's witnesses admitted that

two men could not lift the hose and gear because of its weight (although Isaac stated that 40 feet of dry hose and machine weighed only 90 pounds). The clear inference is that the weight, demanding the use of three men to raise the hose, machine and water in the hose, was far more than 90 pounds; and that the additional weight was the water that the bo'sun said should not be in the hose when it was raised. The jury obviously believed that there was, in view of the bo-sun's admission that there often was. Plaintiff is not required to prove why the defendant's employees failed in the duty to properly perform but only that proper performance would raise the hose and machine and that because of the neglience in letting go, the accident occurred. The jury believed that "the other crewmen with whom the plaintiff was working in removing the Butterworthing equipment negligently let go of the hose and line", causing the accident. The jury listened and believed the plaintiff when he approximated the weight of the hose, water and machine at 300 or 250 pounds (see page 22 of moving affidavit). And that, of course, was a very good reason for the failure of the crewmen in negligently letting go of the hose and line.

Suppositions of what physically would have happened had it been as testified are of no moment here. In point of fact, plaintiff's testimony sufficiently explained the circumstances leading to the accident which, together with the testimony of defendant's employees that there was at times water in the

hose when being raised, formed a basis for the jury's determination that the plaintiff was pulled forward by the weight of a 300 or 250 pound hose with water after the middle man permitted the hose to slip back and the line man did not brake it with his foot. Despite the defendant's repeated assertions that the plaintiff did not testify about water in the hose, the quote on page 22 of the moving affidavit clearly proves that he did. It is in short a clear statement by the plaintiff that the weight being raised was from the hose, and the water, and the machine.

The defendant's attorney's conjectures in laws of physics requires no answer. The matter was presented to the jury; its verdict has been received. The defendant's attorney's arguments on the facts and that the plaintiff's testimony should not have been believed has no place in this motion. Further, the repeated assertions in the moving affidavit that the man "released" the hose and line does not make it so. That implies intention, a wild contention previously suggested and rejected by the Court. The hose and line fell back into the tank because they were not properly held by defendant's employees.

The two men whom plaintiff claimed were negligent denied that the accident happened. The jury obviously did not believe them.

Plaintiff's testimony was that he was hurt; the other men knew it; they rested a moment or two; started again to raise the hose; that the plaintiff informed the bo'sun that his back hurt him at 9:30 that night, informed the Chief Mate the next

morning when he found that his back had stiffened to the point that he could not get out of bed. Again, sufficient to raise the issue for the jury and to be laid to rest by its verdict.

The jury found that the history given by the plaintiff at the Public Health Service, "when pulling up the butterworth hose", was reasonable, the issue was before it.

Dr. Lodico was and is a professional medical witness, testifying for a fee. I did attempt to impugn his motives and that very same approach of cross-examination of a non-treating doctor, brought into the case for the sole purpose of professional testimony, has been accepted time and time again as a proper trial tactic. This Court having heard numerous negligence cases over the years has surely heard similar questions. There was nothing improper in anything said to or asked of Dr. Lodico. Defendant's attorney will stop at nothing to blame everything but justice and his own trial ability for the verdict.

Defendant's attorney persists in referring to his professional medical witness' testimony while conveniently forgetting plaintiff's evidence. Dr. Seaman said that the pain of prostatitis is different from that of the lumbo-sacral strain and that plaintiff's low back strain was caused by the accident. His testimony raised the issue of fact that permitted the jury to rule in plaintiff's favor.

Defendant again raised questions of plaintiff's credibility at the Public Health Service. The dates of plaintiff's fit-for-duty and not fit for duty were before the jury for its determina-

tion. The dates set forth in the moving affidavit are not correct. Plaintiff was not fit for duty from the date of the accident to August 6, 1971. He was then not fit for duty for bronchitis from September 7, 1971. Then on November 23, 1971, plaintiff was held not fit for duty for his back, continuing not fit for duty on December 2, 1971, January 11, 1972, February 1, and February 25, 1972. He was marked fit for duty on March 10, 1972, April 21, and July 20, 1972, with scheduled return visits. He was not fit on August 17, and then was marked fit on September 26, 1972. He was ultimately able to get a job and sign aboard the "LONGVIEW VICTORY" on November 20, 1972. All of the assertions by defendant relating to plaintiff's credibility have been settled by the jury.

The plaintiff lost time from June 11, 1971 to November 20, 1972. Whether he was marked not fit for duty continuously was not conclusive of his ability to work. He testified that he wasn't able to join the ship until that November 20, 1972 date. Dr. Seaman stated that the plaintiff was disabled all the time, having examined the plaintiff on April 4, 1972, and January 27, 1975. It was a question of fact for the jury as to whether the plaintiff was disabled from the injury received in the accident caused by the defendant. It has now been determined that he was.

The plaintiff lost 17 months from June 1971 through November 1972. He was also not fit for duty following his trip on the "JEFF DAVIS" in 1973 and the "ARIZPA" in 1974, as shown

in the Public Health Service records, in evidence and which was before the jury at its deliberation. The full term of plaintiff disabilities were proper for the jury to consider. The question of the plaintiff's work record was also before the jury as a question of fact. Earning approximately $900.00 per month as an A.B., the $16,500.00 loss of past wages of the verdict was entirely within reason and substantiated by the evidence. In point of fact the plaintiff had worked 14 consecutive months on the "PECOS", from September 1, 1967 to October 20, 1968. The jury had the duty to determine the extent of plaintiff's loss for the times that he was out of work for the injury caused by the defendant. At the $900.00 per month average it would take a little over 18 months out of work for that earning. For an original loss of 17 months and later losses of wages in 1973 and 1974, the jury averaged the amount that the plaintiff would have earned in some 18 months. It was an amount entirely consistent with the record.

Plaintiff's confusion of vessels due to the similarity of names of the "LINFIELD VICTORY" and the "LONGVIEW VICTORY" was quickly brought to an end and he very openly admitted that he had had an injury to his thumb on the latter vessel. This was ultimately borne out although the defendant's attorney attempted time after time to imply that it was an injury to the back. The medical logs of the "LONGVIEW VICTORY" established the injury to the thumb. All of that was before the jury. While

the jury could have downgraded plaintiff's credibility if it chose to, any issue of credibility is now behind us with the verdict in plaintiff's favor. Whatever the circumstances of plaintiff's injury aboard the "LONGVIEW VICTORY" it hardly behooves defendant's attorney to argue the merits of that case.

As to my reference to the statement of Frank Wherrity, the Court twice clearly instructed the jury to disregard the comment. The statement was not read. The jury knew that it existed since it was set forth in an answer to plaintiff's interrogatories, offered into evidence by me.

Plaintiff's interrogatory and defendant's answer #27, read to the jury without objection by defendant's attorney and after discussion with the Court, is as follows:

> Q. "State the names, addresses, ratings and Z numbers of all officers, crew members and eyewitnesses who have given oral or written statements or affidavits concerning the accident complained of herein, and the names of the persons to whom such statements or affidavits were made, the dates thereof, and the names and addresses of the persons who now have custody of said statements or affidavits and, in addition thereto, annex a photocopy of said statements or affidavits."
>
> A. "Boatswain Angelos Antoniou and Seaman Francis Wherrity, copies annexed."

That was read, the jury knew that the statements by Antoniou and Wherrity existed. The statement of Antoniou was offered into evidence and was received. The statement of Wherrity was offered and upon objection by defendant's attorney was not

received. All of the discourse was before the jury.

The only thing that the jury did not know was the content of the Wherrity statement. Never, either during trial or in my summation did I attempt to read or offer to tell the jury directly or indirectly what was set forth. The jury's verdict was made without any awareness of the fact that the statement taken by defendant's investigator had three separate references that the raising of the hose and machine required four men and not three in order to be completed in safety.

The remark made in summation and now attacked recalled to the jury that the statement existed (which the jury knew); that I offered it (which it knew) and that the defendant objected to its inclusion (which it knew). What prejudice resulted when the jury heard nothing more than it already knew and the Court directed the jury to disregard the comment.

// After the evidence was introduced and both sides had rested, and both sides had summed up, the defendant's attorney changed his mind and sought to introduce the very same statement. As is to be expected, the moving affidavit omits all of the above, omits that the trial had ended except for the charge, omits that the introduction of the statement at that late time would have given it an importance out of reality, unfair and prejudicial to the parties if placed in at that time. The Court agreed by

its rejection of the defendant's attorney's application.

The moving affidavit's assertion of deception by me is pure nonsense when it is perfectly clear that it was the defendant's attorney's change of mind that brought about this situation. That it came too late and ultimately had to be declined by me was not my doing. The indecisiveness of defendant's attorney should not be cast upon me. And I am appalled by the charge of deceit when I earnestly offered the statement and unsuccessfully sought to get it into evidence and was stymied by the defendant's attorney's objection.

Defendant's attorney makes absurd presumptions without the slightest proof. In point of fact I never spoke to the prospective witness Wherrity about the case. I never discussed the circumstances of his statement with him. The Court will recall that the statement was offered to permit the jury to hear that four men were necessary to lift the hose and machine with safety. The statement did, in fact, corroborate plaintiff's claim that an insufficient number of crewmen were assigned to the work. The jury found for the defendant on the issue. Perhaps, if the statement had been admitted the decision in defendant's favor would have been different.

It would appear that defendant's attorney, in his embarrassment at not having agreed to the introduction of the statement

at the time it was offered, can only attack the world about him in an effort to blame everybody but himself for the result of the trial. Neither the Court nor I are responsible for defendant's attorney's failure to see the issue of the statement in its proper perspective.

Contrary to the moving affidavit, the sentence of my summation quoted on page 27 of the moving affidavit is a very fair and equitable statement that the verdict should be based not upon colloquy between Court and attorneys but upon the evidence deduced. What could be more proper than that? What does defendant's attorney complain of?

I did not know that either the Court or I had to answer to the defendant's attorney for our conduct. Interestingly, the defendant's attorney suggests that the trial was "long and difficult", the same language that I used in my summation and to which a frenzied objection was made when I mentioned it in passing in my apology to the jury for any part that I may have inadverently played in the give and take of the trial. The thoughts set forth in the moving affidavit are seen by me at this time as an affront to the Court.

Defendant's attorney specifically referred to "gonorrhea", was admonished by the Court and the jury was directed to disregard that remark. I recalled a prior discussion in Chambers but could not locate the reference to the treatment for gonorrhea. I now know that I was looking at the wrong medical record. That the

defendant's attorney, who knew where in the record the medical notation was, could have pointed out the insertion instead of standing mute. The issue would have been settled. However, that failure to act with common decency was the cause of the flare-up that followed. Suffice to say that although defendant's attorney knew that the gonorrhea was not pertinent to the case he viciously tried to blacken plaintiff's name with the stigma of having had a venereal disease, to be heard by the four women on the jury. For that same attorney to complain of that episode is the height of boldness.

The assertion by defendant's attorney that the Court was demeaned at the trial is, in itself, a demeaning statement. I cannot and do not believe that I conducted myself as anything other than an active participant in a trial as the plaintiff's representative. And I cannot conceive of the Court of Appeals reading anything more than an attorney's vigorous protection of the rights of his client in the record.

In conclusion, the moving papers re-live the testimony from the defendant's viewpoint. There is no doubt but that there were issues of fact for determination. So the Court found in its rulings on the trial motions. So the jury's verdict reflects.

As said by defendant's attorney at his opening, "credibility" was <u>the issue</u> in the case. The jury has now de-

termined that issue. The plaintiff was believed, the defendant was not.

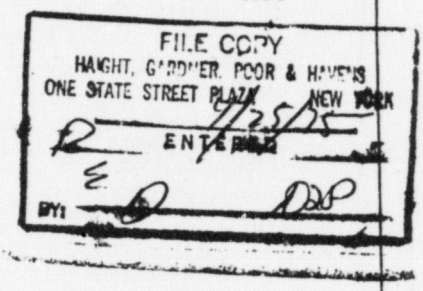
THE DEFENDANT'S MOTIONS SHOULD BE DENIED.

HARVEY GOLDSTEIN

Sworn to before me, this
2nd day of May, 1975.

GAIL VARIAN
Notary Public, State of New York
Qual. [illegible]
Commission Expires [illegible], 197

GAIL VARIAN (REALE)
Notary Public, State of New York
Qual. Bronx Co. – No. 03-9448993
Commission Expires March 30, 1976



UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

LEROY PORSS,

Plaintiff,

- against -

MARITIME OVERSEAS CORPORATION,

Defendant.

----------x

AFFIDAVIT

72 Civ. 1600
(RHL)

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JOSEPH T. STEARNS, first being duly sworn, deposes and says:

1. I am an attorney-at-law associated with Haight, Gardner, Poor & Havens, attorneys for defendant. I am fully familiar with the pleadings and all prior proceedings had herein.

2. I submit this affidavit in support of defendant's motion for judgment notwithstanding the verdict pursuant to Rule 50(b) FRCP and for a new trial pursuant to Rule 59.

3. This is a seaman's personal injury case brought pursuant to the Jones Act, which was tried April 7 through 10 and 14 through 16, 1975 at the conclusion of which the jury returned a verdict in plaintiff's favor in the total sum of $25,000 for pain and suffering to date and $17,500 for past lost wages. In effect, by special verdict, the jury decided that plaintiff had not sustained a permanent injury. An acute sprain of the lumbosacral spine was alleged. Plaintiff's theory of the case, despite

the denial of counsel for plaintiff during the deposition of George Schmidt, a fellow A/B working with plaintiff at the time of the alleged accident, (see transcript of Schmidt's deposition, p. 15), was that at approximately 9:20 or 9:30 on June 8, 1971, he sustained sudden injury to his back while attempting to lift a butterworth hose and machine a distance of some 30-35 feet from the No. 3 center tank of the m/s Overseas Aleutian. Plaintiff was employed as an A/B aboard the vessel, having joined at Eagle Point, New Jersey on June 6 or 7, 1971, for a coastwise voyage to Pilottown, Louisiana. Plaintiff testified at his pre-trial deposition and at the trial of this case that while working with George Schmidt and "Frank" (clearly Frank Wherrity, the deck maintenance man) both simultaneously let go of the hose and line as it was being lifted, causing plaintiff to be yanked forward off his feet and to strike the deck with his knees. This accident was described during cross-examination by Dr. George Seaman, plaintiff's examining physician, as a "hyperextension" accident.

4. Plaintiff admitted that he continued working after the accident but only, according to his hearsay declaration, after an alleged utterance by George Schmidt, that the work had to be concluded. During his testimony plaintiff made no mention of water remaining in the hose, the proposition adopted by his counsel during summation. Plaintiff merely said that the hose and machine weighed from 300-500 lbs. and the machine <u>itself</u> from 250-300 lbs. Plaintiff also alleged that four not three men should have been used to be removing the machine and hose from the tank at the conclusion of the so-called butterworthing

operation. Plaintiff, and all witnesses whose testimony were heard or read, agreed that the hose and machine were removed by the so-called "middle" or "anchor" man straddling the butterworth plate, 16 inches wide according to Schmidt's testimony, and lifting the hose and a manila line (1/2" - 3/4" according to plaintiff's testimony). The line was affixed as close as possible to the butterworth machine itself and was handled by a man on the opposite side of the middle man, (according to plaintiff's testimony, George Schmidt), whom plaintiff identified as Frank. Suddenly, according to plaintiff's theory of the case, the machine and hose were dropped simultaneously by Schmidt and Wherrity, causing the full brunt of the weight of the machine and hose to fall upon plaintiff, resulting in the accident described.

5. Plaintiff testified that the butterworthing machine was 16" x 18" and as we said above weighed from 250-300 lbs. In response to seeing pictures of the vessel's deck and butterworthing machine shown to him by his counsel (Exhibits 1 through 1F), plaintiff said that the metal object depicted in photograph Exhibit 1E was "what the butterworth machine was attached to" and that he "did not see" the machine itself in any of the photographs.

6. Plaintiff also denied having an accident aboard a vessel he joined in November, 1972, after a 17 month period of alleged disability following service on the Overseas Aleutian. He responded to a question on direct examination by his attorney by asserting he left this vessel, the s/s Longview Victory, because of back pain. In fact, plaintiff allegedly sustained an accident on January 7, 1973 which he admitted he did not report for a

period of a number of weeks after its occurrence, and which he said was caused by the negligence of a fellow member of the crew. This alleged injury involved plaintiff's right thumb. But the injury was not the basis for plaintiff seeking a Master's Certificate at the conclusion of the voyage on March 9, 1973. At that time he asked for a Master's Certificate because of "chest pains". Additionally, the ship's medical log for the five month period of the voyage of the s/s Longview Victory discloses no complaints by plaintiff of any back discomfort. A Master's Certificate was admitted in evidence as defendant's Exhibit A and the Longview Victory medical log as defendant's Exhibit G.

7. It would thus appear that in the first day of testimony plaintiff flatly lied about the weight and dimensions of the butterworth machine as well as about the circumstances of his health aboard the Longview Victory and his reason for leaving the vessel. He also falsely attempted to conceal the fact that he had instituted legal proceedings as a result of his alleged thumb injury aboard that vessel, which had proceeded in litigation past the point of filing interrogatories (defendant's Exhibit B for identification) and the conducting of his pre-trial deposition, before the matter was settled. Plaintiff pleaded inadvertence and forgetfulness as his explanation of his denial of a subsequent accident, as well as the reason for his misrepresentation to the court and jury of the circumstances of his leaving the s/s Longview Victory. It would thus seem clear that plaintiff's credibility should have been seriously impaired by the character of his own testimony.

8. The substantiality of plaintiff's claim that an inadequate number of men were present, if in fact he testified to this effect, must be closely questioned, since according to his testimony he had not been engaged in a similar butterworthing operation at any time prior or since and he would not therefore be competant to make such assertion. In addition, plaintiff's lamentably weak explanation of the effect of the alleged necessary fourth man's presence, that someone should have been present to "flake" the hose, was likewise without substance since his absence could not possibly have been a factor in causing, or preventing, the happening of the occurrence alleged. This proposed fourth man would be handling the slack end of the hose, on which plaintiff was or should have been maintaining tension. If the line and hose were dropped by Frank and Schmidt the weight would have "reached" plaintiff first and if heavy enough, which is indeed not likely, might barely arguably have caused the alleged accident whether or not a fourth man had been handling the slack behind plaintiff, as a pure matter of physics. In addition, his equally weak explanation for Wherrity's neglect in, presumably, letting go of the line, that it was necessary for Wherrity to simultaneously step on the slack part of the manila rope, was also without real substance, and this alleged neglect was never convincingly shown to be a possible factor in the occurrence of or prevention of his alleged accident, for precisely the reason set out above.

9. Plaintiff never accounted for Wherrity's alleged act of, simultaneously with Schmidt, releasing the line. It is also my recollection that plaintiff accounted

for this by saying that Wherrity was on the other side of Schmidt and, although the men were close together, he was not directly within plaintiff's view.

10. Plaintiff admitted that he did not say anything to either Schmidt or Wherrity after the remarkable occurrence alleged, despite having a "million pains" immediately after his fall. He also admitted that he did not report the occurrence to the allegedly absent bosun when he returned to the work area, and that he did not tell the vessel's Chief Officer that the back pain and injury allegedly sustained had occurred in the manner described at trial.

11. Plaintiff was admitted as an inpatient at the United States Public Health Service Hospital at New Orleans, Louisiana following the vessel's arrival in port on June 12, 1971. He remained in the hospital for a period of some six days when he was discharged not fit for duty on account of "acute lumbosacral strain" with instructions to report to the United States Public Health Service Hospital or clinic in New York City. Upon his return to New York he was treated as an outpatient at the United States Public Health Service Clinic at Houston Street in Manhattan where he was first seen June 21, 1971. At that time plaintiff was capable of full range of motion of his back and was said to be suffering from "LSS". He was thereafter seen at the Houston Street clinic periodically until, apparently solely because of his continuing complaints, he was referred to the clinic's orthopedic consultant for an examination which was conducted August 6, 1971. On that date plaintiff appeared for examination walking with the aid of a cane or two canes, but was nonetheless able to climb on and off the doctor's examination

table with "great agility". Despite walking with the aid of a cane, (plaintiff's Exhibit 3, p. 14) plaintiff was declared fit for duty. He thereafter, in September 1971, returned to the clinic complaining of bronchial difficulties for which he was not fit (Ibid p. 6-7) which proceeded for a period of some two months until November 23, 1971 when plaintiff again complained of back pain. Without treatment or physical findings, but solely because of complaints, a second appointment for physical examination by the same orthopedist was arranged and plaintiff was seen for a second time on February 24, 1972. Again plaintiff was found to have no orthopedic problem and was declared fit for duty. Before that date, during the period plaintiff was not fit, he was seen and treated for cough, which was the reason for his duty status. He was declared not fit again on August 17, 1972 after going to the clinic with a copy of Dr. Seaman's report.

12. In addition to not reporting the accident to the bosun, and not reporting the accident described at trial to anyone aboard the vessel during the remainder of the voyage, plaintiff did not describe the accident testified to to the doctors at either the hospital in New Orleans or the Houston Street clinic. Defendant's Exhibit D, the Report of Personal Injury, describes the "accident" as happening "at the process of pulling the butterworth hose up from the tank onto the deck."

13. In his opening statement to the jury the attorney for plaintiff claimed that Schmidt or Wherrity or both "lost control" of the hose and line, but the manner or reason for this alleged occurrence was never explained. The attorney for plaintiff instead substituted

evidence of possible water on deck and water in the hose and in place of effective testimony: (1) that either Schmidt or Wherrity slipped and therefore lost control of the line or hose or (2) that there was an inordinate or unusual amount of water in the line at the time of the alleged accident. Testimony to the effect of the latter would, of course, have exposed plaintiff to the serious charge of contributory negligence since he, Schmidt and Wherrity, were of equal rank, none had authority over the other, according to his testimony, and the bosun was not present. Rather than expose plaintiff to cross-examination on this subject, plaintiff's attorney, in the course of the lengthy trial, substituted his own statement that the hose was unduly heavy because it had not been permitted to drain, despite the clear failure of plaintiff to so testify. A similar substitution for direct proof that four men should have been present, and for the assertion that Wherrity should have been standing with one foot on the slack end while holding the line, was made by counsel who in summation asserted that the fourth man flaking the hose and Wherrity's foot on the line were safety factors or "safety men" which should have been, but were not, observed or present. Of course, no expert was called by plaintiff and Mr. Issac, an admitted expert, testified contrary to plaintiff's attorney's arguments.

14. Of course, the happening of the accident described by plaintiff wherein plaintiff allegedly developed some back strain while working aboard the vessel, was the issue which should have been presented to the jury, not the pure conjectural possibility of its occurrence. In support of the happening of the alleged accident, only

plaintiff testified to its occurrence and he could not account for its happening, and did not account for his complete failure to complain about or report this alleged mishap. Plaintiff's case was similarly weak because of the unlikelihood that, had the hose and line been dropped, plaintiff, who was standing some distance away from the butterworth opening, would necessarily had been pulled off his feet even by the weight claimed. Plaintiff was braced to resist the pull of the line since it was he who was taking up the slack as it was lifted by the anchor man, Schmidt. In addition, as Schmidt testified (deposition, p. 13), the hose rubbed against the opening and this friction must retard the tendency of the hose to fall back into the tank. In defense, the deposition testimony of the bosun, Antonou and A/B Schmidt was obtained by the defendant. Schmidt said the accident described never occurred. Bosun Antoniou said he was always present when the machines were moved and that he saw no accident of any kind befall plaintiff at any time during the voyage. Schmidt agreed that the machines were never lifted out of the tank or moved without the bosun being on hand. In addition, Antoniou testified that plaintiff only complained of pain in his back and made no mention of any accident. It could be fairly said from the foregoing that the alleged accident testified to by plaintiff first saw the light of day at the time of his examination before trial on August 16, 1972. Subsequent to that, the defendant, now informed of plaintiff's allegation, obtained a statement from Frank Wherrity which the former counsel for defendant annexed along with that of the bosun to answers to plaintiff's interrogatories. These answers, filed in this

Court in March, 1974, provided an alleged basis for the plaintiff's attorney's offer to read the statement of Wherrity in evidence during the course of trial. This offer of proof was refused by the Court, properly so, as hearsay, after discussion which appears in pages EPB 12 through 16 of the trial record.

15. The attorney for plaintiff was not content with the Court's ruling on this point, as on many others. Thus, at EPB 3 of the trial record plaintiff's attorney, during summation, said:

> "And do you recall there was a statement by Mr. Wherrity, which I wasn't allowed to get in but which you know was prepared by - -."

16. At that point the attorney for defendant objected to the reference to the rejected statement and the Court asked the jury to disregard plaintiff's counsel's statement, improper in itself, concerning the existence of the statement. Mr. Goldstein proceeded and at EPB 4, the transcript discloses the following was said in defiance of the Court's admonition:

> "I am not talking about referring to it. I am not talking about reading it. I am talking about the fact that there is such a statement, and to that I can refer, because that is in the answers to interrogatories."

Again the Court instructed the jury to take "no notice" of the statement but Mr. Goldstein was not yet satisfied and in complete disregard for the Court's ruling, said as follows:

> "This statement is there. I cannot read it to you. I cannot get it in. I wanted to but I cannot."

17. On Wednesday, April 16, 1975, on the record in this case, the attorney for defendant offered the statement of Frank Wherrity in evidence to which the

attorney for plaintiff objected. Based on this objection, the Court declined to submit this statement to the jury.

This statement reads as follows:

> "My name is Francis Wherrity and I reside at 240 West Tabor Road Philadelphia, Pa. Phone Number HA 4-1765. I am married and my wifes name is Anna. I am 45 years of age. I am an Able Bodied Seaman. I have a green ticket and can register as a Bosun or Deck. On May 12, 1971 I signed on the "OVERSEAS ALEUTIAN" as an Able Bodied Deck maintenance man. Z # is 52227102. While sailing I do recall cleaning tanks by the use of butterworth process. The butterworthing machine is at the end of a hose and it is about 18 inches by 12 inches in size. It has an arm on the side which revolves and the whole machine revolves. The machine is connected to a hose which is a heavy gauge rubber hose. There is a line attached to the machine the line is regular ship's rigging rope. There should be at least four men required to pull the machine and hoses out. In placing the machine one man can usually let it down after the cradle is placed over the hole. The machine is first handled by almost two man (sic). The machine is lowered about two feet into the whole on deck. Then a cradle is put over the hole. This allows the hose to slide easily and also provides a cover for the hole. After the cleaning process is completed the cradle is removed and it takes at least four men to pull the machine out. The machine goes to the bottom of the tank (a few feet from the bottom actually). The depth of tanks vary on different ships and I do not recall the depth on the "ALEUTIAN". Pulling the machine and hoses is heavy work and it takes at least four men working hard to pull it up. I do not recall specific details as to cleaning of the tanks but I do recall cleaning tanks on that voyage. I can not recall Leroy Porss. I may remember him if I saw him. I can't recall if he was helping in the cleaning of the tanks. I do not recall an accident involving injury to any of the crewmembers. I do not recall an accident where we left a machine go causing injury to anyone. It is very difficult to lift the machines out and it is possible at times to have it slack a few feet due to slippery lines or slippery decks. I do not however, recall this occurring. The equipment was in good condition. This is the first time I am aware of any alleged accident involving any of the crew. I do not any of the crew members leaving the ship

because of injury. I have read the above two pages and they are true and correct to the best of my knowledge.

Signature: Francis Wherrity"

18. Thus, it appears that the attorney for plaintiff successfully deceived counsel for defendant, the Court and the jury, about his desire to offer Wherrity's statement in evidence. He offered to read a statement annexed to an interrogatory, an offer which was known by the attorney for plaintiff to be improper, and was certain to elicit an objection, in view of that portion of the statement in which Wherrity claimed that four not three men were required and in which he suggests that the accident described was possible. However, Mr. Goldstein did not wish the jury to know that Wherrity had no recollection whatsoever of any accident to plaintiff, and could not remember ever letting go a line while lifting a butterworth hose and machine or anybody being injured as a result of the occurrence of any such event.

19. On the issue of the very happening of the letting go of the line by the absent witness Wherrity, the attorney for plaintiff again substituted conjecture for proof by suggesting to the jury that Wherrity would have confirmed the happening of the accident. While this case was assigned to Judge Weinfeld, an attorney from the office of Fuschberg & Fuschberg, on an application for an adjournment of the trial of this case, I believe on November 14, 1974, reported to that court that an adjournment was necessary because Wherrity was at sea unavailable to testify. Presumably, counsel for plaintiff discussed the case with Wherrity who presumably declined to corroborate plaintiff's claim, and counsel at all times during

trial knew that this "witness" if present would be no help to his case. Of course, the answers to interrogatories (annexed crew list) disclose that this potential witness resides in Philadelphia, Pennsylvania, which has been held to be within the subpoena range of this Court. See Coleman v. American Export Isbrandtsen Lines, Inc., 405 F.2d 250 (2 Cir., 1968). But however questionable plaintiff's trial tactics might have been had he but offered to read an inadmissible statement after it had been excluded, and if he had only proceeded despite the Court's injunction to persist in tactics designed to cause the jury to believe the statements corroborative value, the misconduct attributable to counsel for plaintiff might arguably be excusable. The attorney for plaintiff, however, seems to have done more and seriously misled the court and jury by offering to read a statement from a vital "witness", and thereby implied corroboration of plaintiff's claim of an accident, despite the fact that he knew, and had known for a period of a year that the statement would not supply such corroboration, and that neither, presumably, would the testimony of the missing witness.

20. This action of the attorney for plaintiff as described above was not, of course, the only instance of very questionable tactics during the course of a long and difficult trial. Moreover, the attorney for plaintiff also cannot say that the Court's injunction to the jury to disregard references to the statement was of any effect.

21. In the first paragraph of his opening statement to the jury, which appears at page EBP 1, Mr. Goldstein allegedly apologized to the jury and clearly informed them that in his opinion the conduct of the trial

by the Court had been unfair to his client. In short at this point in the proceeding and at other times, both before the jury and in chambers, the attorney for plaintiff, in skillful attempts to bias the Court, suggested and said that the trial judge's conduct was improper. At EBT 1, plaintiff said, in allegedly explaining his own conduct, that the trial was not "[What] you would normally expect to find in a courthouse" that [He] felt . . . and [he] did, and you know it - that in some way the matter was not being handled even handedly, given the plaintiff . . ." That they, the jury, "should not have had to be put to that burden and to see what went on this last week." Thus counsel, by attacking the integrity of the court, destroyed whatever credibility any admonition might have had by telling the jury that the judge had been and was unfair.

22. The second-most flagrant example of misconduct by the attorney for plaintiff occurred over the offer of testimony of plaintiff's extensive history of gonorrhea for its bearing on the complaints of pain in his right testicle made to the Public Health Service Clinic during the period of his alleged convalescense in the Fall and Spring of 1971-1972. Plaintiff offered in evidence a copy of the records regarding plaintiff's hospitalization in New Orleans. These were accepted by the court as a plaintiff's exhibit. On the sixth page of this exhibit the examining and treating doctor notes plaintiff's history of gonorrhea on five or six occasions. The precise notation is "Gonorrhea X 5-6". This exhibit we reiterate was offered by the attorney for plaintiff as his exhibit, and no request was made to delete any information therein contained. Thereafter, during direct examination of

Dr. Vincent Lodico, Mr. Goldstein, at BS 114 of the trial record objected to a question to the doctor concerning plaintiff's prior history of gonorrhea. The attorney for plaintiff stated in front of the jury that his objection was made because the court had:

> "previously ruled . . . on this subject and Mr. Stearns has deliberately thrown this matter before the jury."

After the objection was sustained, the Court noted that it could not recall any prior ruling but Mr. Goldstein said as follows:

> "Mr. Stearns, I hope that you are satisfied. You struggled for four days to get that in."

After being told by the Court to offer no further comment, plaintiff's counsel, again in front of the jury, finished his initial statement by stating "and you finally got it in." After further instruction to counsel the attorney for plaintiff persisted yet again and said as follows at BS 14, line 16:

> "If Your Honor please, I ask for a mistrial on the grounds that Mr. Stearns deliberately disobeyed Your Honor. Your Honor told him in Your Honor's robing room that it was not to be put in."

After further colloquy, and further objection by Mr. Goldstein, the court instructed the jury to disregard all comments by counsel. At BS 15, line 10, Mr. Goldstein volunteered "That is laughable". He proceeded by saying "It is one of the ugliest things I have ever seen. Mr. Stearns doing a thing like that is one of the . . ." And after yet further instruction from the Court, proceeded by saying "Your Honor will get comment from me to protect my client. You will get it at any time, that is what attorneys are supposed to do."

23. When challenged in chambers, the attorney for plaintiff could not support his statement to the jury that the Court had made prior ruling on the question of the relevance of plaintiff's history of gonorrhea. What was offered was a reference to a serology report in the part of the records excised by the Court at plaintiff's request at the United States Public Health Service Hospital in San Francisco, California, defendant's Exhibit C. This page of the records, with agreement by counsel for the defendant, was removed along with entries concerning plaintiff's hospitalization and treatment for acute paranoid symptoms in 1970, to the exclusion of which the attorney for defendant excepted. The basis for the offer of this relevant medical history is that it contained a diagnosis of an unfounded anxiety developed by plaintiff prior to the accident in suit where he believed himself in harm from fellow members of the crew of the vessel on which he was then sailing. Similarly, plaintiff's subsequent accidents, the one in suit and the one on the Longview Victory, also involve claim that other members of the crew had done him injury. In any event, without reference to the correctness of the court's exclusion of plaintiff's history of psychiatric disorder, no prior ruling on gonorrhea was made by the Court. In fact, as we have stated above, the issue of plaintiff's gonorrhea was made part of the record of this case by offer of proof made by the attorney for plaintiff. This bald statement accusing the attorney for the defendant of overreaching and of disobedience of the court's directive was never effectively corrected, since the attorney for plaintiff is correct in asserting that by virtue of his own trial tactics,

admonitions by the court were inadequate or, in the attorney's words, "laughable".

24. Mr. Goldstein, by suggesting and stating and claiming the Court's bias, and that of the defendant and its attorney, effectively deprived the court of its power to control the conduct of the trial of the case. By demeaning the court, the attorney for plaintiff invited, and in disguise of his championing the rights of the allegedly downtrodden plaintiff, insisted, that the trial of the case was rigged and unfair to such degree that only the intervention of the jury by way of a verdict for plaintiff could cure the manifest injustice which the attorney sought to imply would otherwise result.

25. In cross-examination of Dr. Lodico, the attorney for plaintiff again substituted emotion for rational and incisive cross examination. But this emotional outburst, as all others by plaintiff's counsel, was not without point. Counsel for plaintiff began by impugning the character of Dr. Lodico, first by suggesting that the doctor's practice was wholly devoted to examination of litigants. At BS 27, line 15, the attorney for plaintiff, attempting by mere recitation to supply facts, never properly developed through direct testimony, to inform the jury that Dr. Lodico had "downtown days" and "uptown days", and suggested the matter of insurance, and again not properly an issue before the jury, by stating that (line 8 of the same page) the doctor testified on behalf of "insurance companies". Not satisfied he then proceeded to impugn Dr. Lodico's motives. And at BS 43, line 8, counsel told the jury that it was the substantial part of

Dr. Lodico's practice to "examine people who are injured and to report against them." At BS 44, a long speech passing for a question, the attorney for plaintiff, beginning at line 20, skirted entirely the very real issue of the veracity of plaintiff's complaints subsequent to August 6, 1971, and the problem in plaintiff's case presented by the fact that the clinic records subsequent to that date are without reference to <u>any</u> findings of injury, by suggesting that Dr. Lodico was unfair in his testimony and in his reliance on these very records. Still not satisfied with the impact of this and other improper questions passing as cross-examination, at BS 45, line 12, a similar statement containing the similar vicious insinuation was again posed. As the record indicates throughout this alleged cross-examination, Mr. Goldstein was shouting, consistent with his assumed posture as champion of the beleagured plaintiff.

26. Defendant's new trial application is also based on the character of the case presented by plaintiff and on the contention that the verdict was totally contrary to the weight of the evidence presented. In addition, in this very "close case" the conduct of counsel for plaintiff during the trial of this case has added importance and these two factors, taken together, must be considered an indisputable basis for a new trial. As the court is aware, and as the record reflects, throughout the trial of the case plaintiff's attorney imagined himself and his client certain victims of an injustice at the hands of the Court and he strove without relent to disparage the integrity of the proceeding. In this Mr. Goldstein did not stop short of flatly accusing the court of bias, prejudice and unfair

dealing and skillfully managed to project the defendant's defense in the same light by suggesting impropriety in the introduction of plaintiff's history of gonorrhea as well as suggesting forcefully during summation that the "accident" occurred in a manner and for reason which was unsupported by any testimony.

27. Thus, in summation the attorney for plaintiff told the jury in the highly charged emotional context of the trial of this case at EBP 10:

> "I know it is rather hard because of what happened during the course of the week in the battles in this courtroom, but the fact remains that your situation is to determine the facts of this case, to determine the truth or non-truth of what Mr. Porss has told you and what all of the other people who came to testify have told you."

Since Mr. Goldstein acknowledges that the conduct of the trial made it "rather hard" to decide the merits of the case, this new trial application should have his support.

28. In effect, what the attorney for plaintiff conducted was a "political trial". Mr. Goldstein proceeded on the assumption that no justice could be had before this court. His disruptive tactics and misstatements culminated in the misrepresentation of purpose regarding Wherrity's statement achieved by offering it before the jury, and later refusing to consent to its admission in camera.

29. We also make argument that the jury's verdict was excessive for both pain and suffering and lost wages. Page 38 of plaintiff's Exhibit 3, the Houston Street Clinic records, shows that plaintiff complained of pain radiating to his right groin on June 21, 1971, his first visit to the clinic. This fact, taken with Dr. Lodico's testimony linking such pain with prostate infection, casts doubt whether plaintiff's subsequent back complaints were due to any injury. The size of the award for lost wages, which from the record

should only be from November 17, 1972, is likewise excessive in light of plaintiff's attorney's concession that had plaintiff not been "injured" he would not have worked the entire 17 month period. This concession appears at page EPB 23 of the transcript. There was no testimony from Dr. Seaman, from my recollection, of any period of disability after November 17, 1972. Moreover, plaintiff was fit for duty for periods during this time and was unfit for other reasons during the alleged 17 month period of disability. Records introduced by plaintiff as Exhibits 3 and 4 indicate that plaintiff was unfit for duty from the time of the accident until August 6, 1971. At that time he was declared fit for duty following an orthopedic examination by the Houston Street orthopedic consultant. From September 6, 1971 to November 23, 1971, plaintiff was either fit for duty, or not fit for duty as a result of bronchitis and cough. On that latter date, while still complaining of chest difficulties, he reported still having persistent low back pain. It is thus not clear from what basis his duty status was determined. Thereafter, complaints of back pain with complaints of coughing are noted in the clinic records during visits December 21, 1971, January 11, 1972 and February 1, 1972, after which he was examined a second time by the consultant orthopedist and again found fit for duty. This examination occurred February 24, 1972, although the consultant's report was apparently not received by the clinic doctor until March 10, 1972 when he was again declared fit for duty. Following that date, on April 21, 1972, he again reappeared at the clinic complaining of back pain but was again declared fit for duty. On

August 17, 1972 we returned to the clinic with a copy of a report by Dr. Seaman at which time, apparently wholly on the basis of that doctor's alleged findings, he was declared not fit for duty. He was again declared fit for duty on September 26, 1972.

30. Plaintiff was therefore not fit for duty by the standards of the Public Health Service Outpatient Clinic from August 17, 1972 to September 26, 1972, on the basis of Dr. Seaman's report. He was also not fit for duty for combined complaints of chest difficulties and back pain from November 23, 1971 to February 24, 1972. In all, therefore, plaintiff was not fit for duty for less than two months until August 6th, for three months between November 23, 1971 and February 24, 1972 and for approximately one month and ten days on the basis of Dr. Seaman's report or, in all, approximately six months before returning to sea aboard the Longview Victory in November, 1972, aboard which he sailed without complaints of back pain for a period of approximately five months. Assuming as plaintiff's attorney seems to have conceded, that plaintiff would have sailed about two thirds of each year had he been fit for duty, the proper period of lost wages, supported by the proof submitted by plaintiff, should be approximately four months or about $3,600, not $17,500 as the jury found. This analysis does not account for the fact that it is unclear whether between November 23, 1971 and February 24, 1972 his back complaints were the reason for his duty status.

31. Throughout the trial of the case the attorney for defendant objected to a supposition supplied by counsel for plaintiff that the hose had not been permitted to drain.

During summation, for example, at EBP 16, the attorney for plaintiff stated:

> "I suggest to you that there is exactly what the case for this accident is, that the water was not allowed to drain out, ..."

This statement during summation was also objected to.

32. Reading plaintiff's testimony both direct and cross discloses, only, the following testimony concerning water in the hose was, in fact, presented. At WC 44, the attorney for plaintiff asked his client the weight of the entire hose and machine at the time he and the other two men started to pick it up. Plaintiff's estimate, which appears on WC 45, was "300 to 500 lbs. I would say." At that point the Court interjected and the following colloquy occurred:

> "THE COURT: That is for what, the machine?
>
> THE WITNESS: The hose.
>
> THE COURT: The hose.
>
> THE WITNESS: And the water.
>
> THE COURT: The hose and the machine?
>
> THE WITNESS: Yes, sir."

33. During cross examination, however, at WC 136, plaintiff's deposition testimony was read in the record in which he testified that the machine "just it itself" weighed "oh maybe 300 lbs., 250 something like that. I don't know, I can't, I don't know." There is absolutely no other testimony of any failure to permit the hose to drain, to any hurry in the work being performed, or any other basis for the statements supplied to counsel that the hose had not been permitted to drain. Antiniou and Schmidt

testified that a gallon or a pound or couple of pounds of water would remain after draining, as the hose always was. Of course, the machine itself weighed but 35-1/2 lbs. Thus, plaintiff's attorney substituted conjecture during summation for proof during direct examination of his client. The reason for this is obvious. Had plaintiff testified that the hose had not been permitted to drain, since the bosun was not present and none of the three men working together was in a position of authority over the other, plaintiff's contributory negligence would have been manifest. By this, the attorney for plaintiff attempted, and apparently succeeded, in confusing the proof of this case.

JOSEPH T. STEARNS

Sworn to before me this
25 day of April, 1975.

Notary Public

(Seal)

GEORGE J. BIERNESSER
Notary Public, State of New York
No. 31-5216775
Qualified in New York County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

LEROY PORSS,

Plaintiff,

-against-

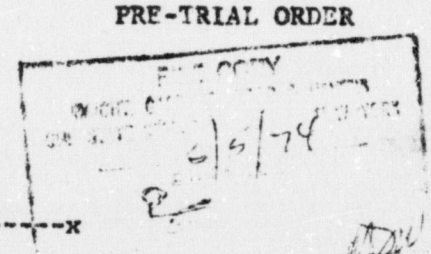
MARITIME OVERSEAS CORPORATION,

Defendant.

----------x

72 CIV. 1600

PRE-TRIAL ORDER



On July 25, 1974, the parties in this action or their attorneys appeared before the Court at a pre-trial conference pursuant to Rule 16 of the Federal Rules of Civil Procedure, and the following action was taken.

1. The pleadings were agreed to be deemed amended in accordance with the framing of the issues in this action in paragraph 9 of this pre-trial order.

2. The parties agreed that the trial of this action should be based upon this order and upon the pleadings as amended, except that the following issues raised by the pleadings are expressly abandoned: None.

3. (a) The parties stipulated that the following facts are not in dispute in this action (each party reserving the right to object to the materiality of any such stipulated fact and its relevancy to the issues):

This Court has jurisdiction of this matter by reason of the Jones Act, 46 U.S.C. 688 and under the general maritime law of the United States.

For the purposes of this case only, defendant stipulates that the plaintiff was a seaman employed by the defendant aboard the "OVERSEAS ALEUTIAN", and that the defendant owned and operated the vessel.

3.(b) The plaintiff's contentions as to liability and damages are as follows:

The accident occurred during the course of plaintiff's employment; the plaintiff was on duty at the time of the accident and the defendant was negligent in failing to provide proper equipment for the Butterworthing operation; failed to provide sufficient numbers of competent crew members to perform the operation; failed to inspect and determine the manner and method of the Butterworthing operation prior to its commencements and further by reason of the negligence of plaintiff's co-workers, the Bos'n and the officers who had failed to determine that the manner and method of the Butterworthing operation was safe, and further that the vessel was unseaworthy in failing to provide proper equipment to raise the hose and machine from the tank; in failing to provide sufficient numbers of seaman to perform the operation; in failing to provide competent officers who should have made a determination by prior examination that the manner and method of the operation was safe and that the defendant owes to the plaintiff maintenance and cure as a result of the injuries sustained which required treatment.

Said injuries were

Severe, acute lumbosacral strain, which was treated by the medical officer aboard the ship and which required his admission to the Public Health Service Hospital at New Orleans, Louisiana on June 12, 1971, suffering with a listing of the lower back to the left and with right paravertebral muscle spasm and decreased, painful range of motion of the lumbosacral spine, with radiation of pain down the right thigh, with pain and tenderness of the lumbosacral spine region; with treatment consisting of bed reat, codeine, analgesics, muscle relaxants; and the plaintiff was discharged not fit for duty to his home in New York for continued treatment and was treated at the Public Health Service Clinic in New York City suffering with the same symptoms and with

pain in the right testicle upon any lifting, with pain radiating down both legs, with pain to the back of the neck and head; with sexual weakness; with continued treatment to August 6, 1971 when marked Fit for Duty in the lumbosacral region, with medication of librium, with continued pain in the upper thoracic spine which required continued treatment at the Public Health Service Clinic in New York City for pain in the lower back region and with slight numbness of the right leg until March 10, 1972; when the plaintiff was marked Fit for Duty, with a lumbosacral corset, with continued treatment by the Public Health Service for chronic low back strain with examination on April 14, 1972 indicating paravertebral muscle spasm, motion limited and painful, piriformis stretch test and Patrick signs positive, greater on the right; tenderness at the lumbosacral junction, midline; vertical concussion test positive with lower back pain, with radiation of pain, with the diagnosis of chronic unstable low back, all of which resulted in a loss of earnings.

3.(c) The defendant contends that plaintiff was not injured and did not sustain any injuries of the type and extent he alleges. Defendant disputes the extent of loss of earnings allegedly suffered by plaintiff.

It is the position of the defendant that there was no negligence on its part and no unseaworthiness of the "OVERSEAS ALEUTIAN". It is also the position of the defendant that if the plaintiff suffered any injuries as alleged in his complaint, these injuries were due to his contributory negligence, in whole or in part.

4.(a) The exhibits which each party now expects to offer at the trial are as follows:

Plaintiff's exhibits

1. Public Health Service records of treatment of the plaintiff.

2. Internal Revenue Service records of the plaintiff.

3. Butterworthing plans, booklets and photographs.

4. Log books of the "OVERSEAS ALEUTIAN" for the voyage involved.

5. Plans and diagrams of the "OVERSEAS ALEUTIAN".

6. Defendant's personnel records concerning the plaintiff.

7. All wage records concerning the plaintiff.

Defendant may offer:

A. Hospital and physicians' records.

B. Plaintiff's wage records including income tax returns and records of maintenance payments.

C. Butterworthing plans, booklets and photographs.

D. Ship's log books.

E. Ship's plans.

F. Depositions and exhibits marked thereon.

G. Seamen's International Union contract.

The foregoing lists of exhibits does not include exhibits offered for the purposes of impeachment. Plaintiff and defendant reserve the right to offer exhibits listed in the pre-trial memoranda of other parties. Plaintiff and defendant reserve the right to offer in evidence other exhibits which may become relevant and/or necessary by reason of the testimony adduced at the trial of this action.

4.(b) Copies of hospital records may be offered into evidence if authenticated by a letter or other certificate which purports to be that of the custodian of the records who certifies that the copy is true and complete. More formal proof of the authenticity of the records is waived.

4.(c) Of the documents listed in paragraph 4(a) hereof, those marked with an asterisk (are conceded to be genuine without conceding admissibility(may be received in evidence).

5. The parties agree that the witnesses whom each party now intends to call, along with the specialty of experts to be called, are those listed below. Should any party hereafter decide to call any additional witnesses prompt notice of their identity shall be given to each party in writing, setting forth the reason why such witness was not theretofore identified. No witness may be called at trial unless identified as above stated.

Plaintiff may call as witnesses:

1. George Schmitt (crewman of the vessel)
2. Frank (deck maintenance man), last name unknown.
3. Bos'n aboard the vessel.
4. Chief mate aboard the vessel (name unknown).
5. Dr. George Seaman, 99 Lafayette Street, Brooklyn, New York, medical expert witness.
6. Expert on Butterworthing system and use thereof (name to be provided).

Defendant may call as witnesses:

A. Francis Wherrity, or other ship's officers or crew.
B. Angelos Antoniou, or other ship's officers or crew.
C. George Schmitt, or other ship's officers or crew.
D. Vincent Lodico, M.D., or other medical expert.
E. Captain William Wheeler, maritime expert or other maritime expert to be named.
F. Witness as to SIU contract, to be named.

The foregoing list of witnesses is not intended to include witnesses offered for the purposes of impeachment. Plaintiff and defendant reserve the right to call any witnesses named in any pre-trial memoranda of the other parties. Plaintiff and defendant further reserve the right to offer and submit to the court such other witnesses whose testimony may become relevant and/or necessary in the course of this case.

6. Inapplicable.

7. The following are all of the claims for damages or for other relief asserted by the plaintiff in this action, as of the date of this conference:

Plaintiff suffered with pain from the accident; sustained a loss of earnings from the date of the accident to November 1972 of approximately $14,000.00; may incur additional loss of earnings; had no medical expenses other than travelling expense to and from the Public Health Service hospitals for treatment; may incur future medical expenses; has due him for maintenance and cure for all outpatient periods until employment was obtained at the per diem rate of $8.00, approximately $2,000.00.

8. The parties also agreed on the following matters:

(a) Plaintiff at this time expects to require three trial days; defendant at this time expects to require three trial days.

9. The issues to be tried are formulated by the Court (with the consent and agreement of the parties) as follows:

(1) Was the defendant negligent as contended in ¶3(b) herein?

(2) Was the S/S OVERSEAS ALEUTIAN unseaworthy as contended in ¶3(b) herein?

(3) If the defendant was negligent as claimed, or if the vessel was unseaworthy as claimed, did plaintiff sustain any injuries as a proximate result of such negligence or unseaworthiness?

(4) What is the pecuniary value of the plaintiff's damages?

(5) Was the plaintiff guilty of contributory negligence in bringing about his injury as contended in ¶3(c) herein?

(6) If the plaintiff was guilty of any negligence which proximately contributed to the happening, what portion of the responsibility for the accident is attributable to the plaintiff's negligence?

Dated: New York, New York
July 23, 1974

SO ORDERED:

_____
U.S.D.J.

CONSENTED TO:

Attorneys for Plaintiff

_____
Attorneys for Defendant

ON-FXB.
4101-53.

OFFICE COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

LEROY PORSS,

Plaintiff,

-against-

72 Civ. 1600 FW

MARITIME OVERSEAS CORPORATION,

Defendant.

4-29-74

- -x

DEFENDANT'S ANSWERS TO PLAINTIFF'S INTERROGATORIES

1. Eagle Point, New Jersey (departing June 7, 1971) to Marrero, Louisiana (arriving June 11, 1971).

2. Eagle Point, New Jersey on June 6, 1971.

3. No.

4. See crew list annexed.

5. Unknown.

6. A.B., base pay $506.41 per month, overtime $3.44 and $4.01 per hour.

7. Base pay $101.28, overtime $47.57.

8. Deck Maintenance Man.

9. Yes.

10. We have photographs of the deck area in the vicinity where Porss was working. You may see them or take your own photographs.

11. Yes. We have no personnel record other than

plaintiff's wage voucher and overtime record.

12. No.

13. The Butterworthing was done by lowering the equipment into the tank by manual labor and was withdrawn in the same fashion; Angelo Antoniou, Georgs Schmidt and Francis Wherrity (see crew list); Antoniou ordered the work; the Boatswain inspected the tanks; a cradle was provided of which photographs are available.

14. Not presently known. To be supplied.

15. Photographs of the equipment are available for your inspection.

16. There was only one system.

17. Boatswain Angelo Antoniou, 9 Belknap Road, Hyde Park, Massachusetts 02136.

18. To assist in Butterworthing the ship's tanks.

19. Unknown.

20. Unknown, but before 0800.

21. 0800 - 2300.

22. The boatswain was present throughout the operation.

23. Yes. Routine manner of performing the job was used.

24. See answer 23.

25. Yes. Copy annexed.

26. There were no known witnesses to the incident described by plaintiff in his deposition.

27. Boatswain Angelos Antoniou and Seaman Francis Wherrity, copies annexed.

28. No.

29. Yes. Aspirin and soap liniment.

30. No.

31. There was no such accident.

32. Plaintiff, if he was injured while Butterworthing the ship's tanks, failed to adjust his body properly to the job at hand.

33. Not presently known.

34. Yes. June 11, 1971. A copy is not available.

35. He received a total of $380.00 for the period from June 19, 1971 to August 6, 1971. Maintenance was ended when plaintiff was declared fit for duty.

36. No.

37. None was owed him.

HYDE, DICKERSON & REILLY
Attorneys for Defendant
61 Broadway
New York, New York 10006

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

SAMUEL ROSENBLOOM, being duly sworn, deposes and says that he is the Secretary of MARITIME OVERSEAS CORPORATION, defendant herein; that he has read the foregoing answers to interrogatories and knows the contents thereof and that the same are true to deponent's own knowledge.

This verification is made by deponent because defendant MARITIME OVERSEAS CORPORATION is a corporation and deponent is an officer thereof. The grounds of deponent's information are personal knowledge and records of defendant in his possession.

Samuel Rosenbloom

Sworn to before me this

day of March, 1974

TREASURY DEPARTMENT
UNITED STATES CUSTOMS SERVICE
UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

PASSENGER LIST - CREW LIST

Vol. # 10

Port and Date Foreign Articles Signed _____ (Months Date of Articles)

CARRIER AMERICAN STEAM TANKER OVERSEAS ALEUTIAN 266619
(Nationality, name, official number and tonnage of vessel)

Date of arrival/departure 5/20/71 Port of arrival/departure CONVENT, LA.

Last foreign port before arrival in United States _____ (Country) _____ (Port departed)

If departing, show first port of and date on which carrier arrived in United States on this trip _____

If departing, show first foreign port after departure from United States _____

(1) NAME IN FULL		(2)	(3) CREW		(4)	(5)
Family name (C.G. Inspector - Decks, Number)	Given name and middle initial (Insp. Init. No.)	Nationality and passport number (Date of Birth)	Position	Where and when ship'd or engaged	Crew (departing U. S. Flag vessels only) USCG S or CDB number and name and address of next of kin	This relates to the Crew enumerated above to whom certain passenger questions apply (See Instructions)
Howser	Homer L.	USA	Master	Baltimore	Bk 55812:Wi:Verdella A. 4226 Milford Mill Road, Baltimore,Md 21208	
Steidel	Rolf	"	Ch Mate	Boston	Bk1077Cl:Wi:Beatrice: Route 2A Box 54 D,Dunnellon,Fla. 32630	
Inman	Clark S.	"	2nd Mate	Baltimore	Z 406334:Wi:Sarah E.: P.O.Box 205, Johnsonville, S.C. 29555	
Thompson	John M.	"	3rd Mate	" "	Z292661:Wi:Gloria:3735 Lyndale,Ave., Baltimore, Md. 21213.	
Saliaris	Stylianos A.	"	3rd Mate	Phila.	Z 1223789:Wi:Barbara Ann: 1553 Cheltenham Ave., Philadelphia,Pa. 19124	
Olsen	Daniel T.	"	REO	Baltimore	Bk 22938ClofDl:Bro:Woodrow J.: 938 So. 112th St.,West Allis,Wisc. 53214	
Antoniou	Angelos	"	Bosn	" "	Z 933828:Wi:Souha: 9 Belknap Road: Hyde Park,Mass. 02136.	
Wherrity	Francis X.	"	Dk Mt AB	Phila.	Z 522271D2:Wi:Anna Marie:240 W.Tabor St.,Philadelphia, Pa. 19120	
Schmidt	George	"	AB	Baltimore	Z 674149:Dau:Shirley Mello:35 Pawtuxet, W.Warick,R.I. 02893	
Bobelich	Anthony	"	AB	" "	Z 618384:Sis:Villma Peck:4050 Joseph St.,Rose City,Ohio.	
Murphy	John R.	"	AB	" "	Z 852042 D4:Mo:Clara:4050 Hillen Road, Baltimore, Md. 21213	
Woodward	Fred R.	"	AB	Boston	Z 236326 Dl:Sis:Adelaid Hill:5th Ave., Haverjill, Mass. 01950.	
Arellanes	Jack W.	" HHX	AB	Phila.	Z 797053:Wi:Penney:PO Box 246, Oceanville, N.J. 08231	
Reynolds	Glenn W.	"	AB	Phila.	Z 1248055 Dl:Mo:Bertha J.: 413 So.Laurel St., Lincolnton, N.C. 28092.	
Chaleb	Fadel M.H.	Yemen	OS	Boston	Z1295096:Fa:Haj Haleb Chaleb:P.O.Box 809, Crater,Aden,So.Yemen.	
Medina	Mariano	Honduras	OS	New Orleans	Z 434 90 7661:Wi:Maria Medina:Barrio XX Concepcion 3 Ave.,Casa 9 San Pedro Sula,Honduras.	
Canales	Virgilio	Honduras	OS	New Orleans	Z 568 78 4282:Wi:Theresa:2231 Abundance St.,New Orleans, La. 70122.	
Hammond	William E.	USA	Ch. Engr.	Baltimore	Z 918266 D2:Mo:Mrs.H.C.Fletcher: River Road, Winterport,Maine 04496.	
Conway	Joseph A.	"	1st A/E	Phila.	Z 91923:Wi:Marian:514 XXXXXXXX Keyser Ave., Pinehill N.J.	
Starry	Hygin P.	"	2nd A/E	Baltimore	Z 1051760:Mo:Katherine:210 W. Hazzard St.,Summit Hill,Pa. 18250.	
Ryan	James L.	"	3rd A/E	" "	Z 748086D2:Wi:Catherine:Cape Windsor Road, Selbyville,Del. 19975.	
Pederson	Clifford M.	"	3rd A/E	" "	Z 436892:Wi:Alice: 8 E. Marthart Ave., Havertown, Pa. 19083.	
Anderson	Billy J.	"	Ch. Pump.	Port Arthur	Z 550626:Bro:Bruce D.: 2701 Dewberry Lane, Pasadena,Texas 77502.	
Tucker	John Davis	"	2nd Pump	Phila.	XX Z 348977:Wi:Myrtle J.:428 Columbia, Cumberland, Md. 21502.	
Callier	Melvin J.	"	Eng/Util	Baltimore	Z 1062760Dl:Sis:Ruby L. McCollum: 1908 N.Lincoln St., Lake Charles, La.	

Total Number

Agent _____

TREASURY DEPARTMENT
UNITED STATES CUSTOMS SERVICE
UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

PASSENGER LIST — CREW LIST
(Crew and Crew)

Form Approved
Budget Bureau No. 48-R 000

Sheet No. _____ of _____ Sheets

Port and Date Foreign Articles Signed _____ Port and Date of Articles _____

Class _____
(First, Cabin, Tourist, or Other)

CARRIER American Steam Tanker Overseas Aleutian 266619
(Nationality, name, official number and tonnage of carrier)

Date of arrival/departure _____ Port of arrival/departure _____
(Crew and Crew)

Last foreign port before arrival in United States _____ _____
(Port and Country) (Port departed)

If departing, show first port of and date on which carrier arrived in United States on this trip _____

If departing, show first foreign port after departure from United States _____

No.	(1) NAME IN FULL		(2)	(3) CREW		(4)	(5)
	Family name (C.G. Letters - Grade, Number)	Given name and middle initial (Type, Rev. No.)	Nationality and passport number (Place of Birth)	Position	Where and when shipped or engaged	Crew (departing U. S. Flag vessels only) USCG 8 or C.G.D. number and name and address of next of kin	This column for use of steamship officials only to record any certain paragraphs. (See instructions)
	Jackson	Blanton	USA	Oiler	Baltimore	Z 1170810:Wi:Loretta: Rte 2 Box 211 Harrington Del. 19952	
	Lazo	Gustavo L.	Honduras	Oiler	New Or	Z 1215591:Wi:Clemintina:2255 Robertson St., New Orleans, La. 70117	
	Abad	Benigno R.	Spain	Oiler	Phila.	Z 335381 Dl:Sis:Lucila:60 Avon Pl., Vineland,N.J. 08360	
	Nock	Harlan S.	USA	FWT	Phila.	Z 356482:Dau:Nancy Su:ch:12902 Forest Ave., Cleveland, Ohio.	
	King	Frank M.	"	FWT	" "	Z 1037028 Dl:Wi:Grace: Zebulon, Ga.	
	Frankewicz	Stephen J.	"	Fwt	New Orleans	Z 114125 D3:Mo:Peral McCord: 1105 Elrino Way, Baltimore,Md.	
	Ahmed	Saleh M.	Yemen	Wiper	Boston	Z126-46-5650:Fa:Mohamed Ahmed:181 Rockaway Parkway 5 E New York,11212	
	Yafai	Yonus O.	USA	Wiper	Phila.	Z 1243357:Cou:Abdle M.Awadh: 1288 Nostrand Ave., New York, N.Y. 11226	
	Danner	Elmer C.	"	Steward	Baltimore	Z 114866:Wi:Ruth:1843 North St., Harrisburg, Pa. 17103	
	Garland	Paul E.	"	Ch. Cook	" "	Z 903371:Wi:Mylie:1401 Meadowbrook, Johnson, Tenn, 37601	
	Mora	Rosindo	"	Ck & Bkr	Phila.	Z 929539:Wi:Antonia:1617 Ave., G. Galveston,Texas 77550	
	Staples	Peter N.	"	3r Ck	Phila.	Z 065 42 7370:Fa:Eugene S.: 7 Graci S Apt 3B New York, N.Y. 10028	
	Arceneaux	Harris P.	"	Messman	New Orleans	Z 1172080:Mo:Linden:Box 464 R 13 Gonzales, La. 70735	
	Blanco	Julio B.	"	UMil/MM	New Orleans	Z 1263025:Wi:Lucy M.: 2939 Elsian Fields Ave., New Orleans, La. 70122	
	Stokes	Johnny	"	Messman	New Orleans	Z 436 62 1022:Fa.:JessieJ.:1715 Eight St. New Orleans, La.	
	Feurtado	Clifford E.	Honduras	Util/MM	New Orleans	Z 1248152:Dau:Claudia:Roatan, Honduras	

Total Number

Agent _____

Statement taken
aboard the
S/T "OVERSEAS ALEUTIAN"
on June 18, 1971 at
Westville, New Jersey

S T A T E M E N T

My name is Angelos Antoniou and I live at 9 Belnap Road, Hyde Par[illegible]assachusetts. My S.S. # is 127-14-6990. I was born June 8, 91[illegible]

On June 8, 1971 I was serving aboard the S/T "OVERSEAS ALEUTIAN", as the bosun, having been on the vessel continuosly since January 4, 1971, but having signed Articles on January 12, 1971 at Baltimore, Maryland. I had Leroy Porss working from 1800 hours to 2300 hours, which was overtime, on June 8, 1971. His normal tour of duty was 2400 hours to 0400 hours. During this time we were butterworthing the vessel's tanks, besides Leroy Porss I was using Able bodied seaman George Schmidt. I myself was pulling up the hose and butterworthing equipment while Schmidt and Porss was standing one on each side of me, ready to help me with the slack, which was created as I pulled up the 2 and 1/2 inch rubber hose connected to the butterworth machine and its nozzle. I asked Porss to help me and he said his back hurt, but not that he injured it in an accident, and this was about 2130 hours. He finished his overtime on June 8, 1971, knocking off at 2300 hours. The vessel's hoses and butterworthing machinery were in good order and clean and dryand free of obstructions. I never saw Porss injure himself and he never complained of an injury to me, until the following day, when he told me he could not stand his normal 12 to 4 watch, and I notified the Chief Officer, Rolf Steidel, who went over to Porss' room to speak to him. I have read this statement of 2 pages and have had it read to me by Albert A. Lucchino and believe it to be true and correct to the best of my knowledge.

Signature Angelos Antoniou

Witness Albert A. Lucchino

A97

STATEMENT

September 19, 1972
Philadelphia, Pa

My name is Francis Wherrity and I reside at 240 West Tabor Road Philadelphia ,Pa. Phone Number HA 4-1765. I am married and my wifes name is Anna. I am 45 years of age . I am an Able Bodied Seaman. I have a green ticket and can register as a Bosun or Deck. On May 12, 1971 I signed on the " OVERSEAS ALEUTIAN" as an Able Bodied Deck maintenance man. Z # is 52227102. While sailing I do recall cleaning tanks by the use of butterworth process. The butterworthing machine is at the end of a hose and it is about 18 inches by 12 inches in size. It has an arm on the side which revolves and the whole machine revolves. The machine is connected to a hose which is a heavy gauge rubber hose. There is a line attached to the machine the line is regular ship's rigging rope. There should be at least four men required to pull the machine and hoses out.In placing the machine one man can usually let it down after the cradle is placed over the hole.The machine is first handled by almost two man.The machine is lowered about two feet into the whole on deck. Then a cradle is put over the hole. This allows the hose to slide easily and also provides a cover for the hole. After the cleaning process is completed the cradle is removed and it takes at least four men to pull the machine out. The machine goes to the bottom of the tank (a few feet from the bottom actually).The depth of tanks vary on different ships and I do not recall the depth on the " ALEUTIAN". Pulling the machine and hoses is heavy work and it takes at least four men working hard to pull it up. I do not recall specific details as to cleaning of the tanks but I do recall cleaning tanks on that voyage. I can not recall Leroy Porss. I may remember him if I saw him. I can't recall if he was helping in the cleaning of the tanks. I do not recall an accident involving injury to any of the crew-members. I do not recall an accident where we left a machine go causing injury to anyone. It is very difficult to lift the machines out and it is possible at times to have it slack a few feet due to slippery lines or slippery decks. I do not however, recall this occurring. The equipment was in good condition. This is the first time I am aware of any alleged accident involving any of the crew. I do not any of the crew members leaving the ship because of injury. I have read the above two pages and they are true and correct to the best of my knowledge.

Signature : Francis Wherrity

A98

Form . 470

MARITIME OVERSEAS CORPORATION

Ship Managers and Brokers

511 Fifth Avenue, New York, N. Y. 10017

REPORT OF PERSONAL INJURY

IMPORTANT.– (A) Investigate and report immediately every accident, however slight, to crew, stevedores or other persons.

(B) Obtain signed statements from all witnesses.

(C) 3 white copies and blue copy to be airmailed to Maritime Overseas Corporation, N. Y. C. Yellow copy to be retained on board.

(D) If possible, take photographs and save all parts of machinery or gear.

Name of Vessel Overseas Aleutian Flag US Voy. No. 12 From 6/6/71 To

1.–Injured Person

Name Leroy E. Perss Occupation AB

Seaman's Book No. [illegible]

Address Pine Terrace Apts. Highland Falls, N.Y. 10928

Age 42 Married Divorced How many Children 2

Citizen of USA Where Born Estonia

Name of nearest relative Cousin: Voldemar Perss

Address Pine Terrace Apts. Highland Falls, N.Y. 10928

2.–Date man signed on 5/6/71 Where Westwille, N.J. Before whom Master

3.–Date crew paid off Where

4.–Date upon which man was paid off Where

Before whom Amount of wages paid

5.–Wages per month

6.–(a) In whose employment Maritime Overseas Corp.

(b) How long employed 6 Days

7.–Injury received: (a) Date 6/8/71 (b) Hour 2130 (c) Place On deck # 3 P.W

(d) To whom first reported Bos'n. (e) When 6/9 1020

8.–In what port was ship at time of accident At Sea

9.–Describe fully how and where the accident happened At the process of pulling the Butterworth hose up from the tank on to the deck.

COPY TO CAPT.

DATE 6/15/71

MARINE INDEX BUREAU, INC.

17 BATTERY PLACE

Original card sent (date) 9/15/71

Suppl. card sent (date)

(OVER)

10.—Describe as fully as possible nature and extent of injury... Sprained lower part of back or streched

11.—State what was done for the man after the accident with name and address of attending physician or hospital, if any. } Gave liniment and asparin for pain

12.—Statement by injured person... At the moment when the accident happened I did not think much of it. But the next morning I could not get up anymore. At present I can walk around but can not stand or sit up too longe...

Signature of Injured Person; Date:

13.—Name of person in charge or superintending work at time of accident. } Ch. Mate

14.—Was man able to return to duty? Yes same day If so, when? But not the next morning

15.—Was steamer loading or discharging? From or to dock or lighter? } ....

16.—What machinery or gear was in use, and was it in good order? } ....

17.—Was the man sober? Yes

18.—Was substitute signed on? ... On what date? ...

19.—Name of substitute ...

20.—Name two prior employers of injured party... Sea Land ...

Date: 6-11-71

(Signature of Master, Surgeon or Officer)

WITNESSES TO ACCIDENT AND PERSONS ASSISTING IN WORK

NAME	SIGNATURE	HOME ADDRESS

4101-53.

A100

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

LEROY PORSS,

Plaintiff,

72 CIV. 1600

-against-

MARITIME OVERSEAS CORPORATION,

Defendant.

RE

4-24-74

----------X

INTERROGATORIES PROPOUNDED BY THE PLAINTIFF PURSUANT TO THE FEDERAL RULES OF CIVIL PROCEDURE, TO BE ANSWERED UNDER OATH WITHIN THIRTY (30) DAYS.

1. State the itinerary of the vessel S.S. "OVERSEAS ALEUTIAN", for the voyage during which time the plaintiff sustained the injuries complained of herein, setting forth the dates when the vessel was in each and every port.

2. State the date when and the port in which the plaintiff signed aboard the vessel.

3. State whether the plaintiff was given a pre-sign on physical examination and, if so, state when, where and by whom the examination was given and its result and, in addition thereto, annex a copy of the report of said examination.

4. Set forth the names, addresses, ratings and Z numbers of all of the officers and crew of the engine room and deck department personnel and more specifically, but not limited to, George Schmidt, Frank (last name unknown), a deck maintenance man and the bo'sun.

5. Set forth the names, addresses, ratings and Z numbers of all crew members who roomed with the plaintiff for the voyage involved herein.

6. State the rating of the plaintiff aboard the vessel and his monthly rate of earnings, both base and overtime.

7. Set forth the total base and overtime wages earned by the plaintiff during the voyage involved herein and, in addition thereto, annex a copy of the earning sheets and wage vouchers.

8. State the plaintiff's duties aboard the vessel.

9. State whether the plaintiff's duties included aiding in the use of a Butterworth System of cleaning tanks in the cargo areas of the vessel on specific orders of his superior officer.

10. State whether a photograph or photographs of the cargo tanks, and more specifically, the tank on which the plaintiff was performing duties at the time of his injury is available and will be forwarded to plaintiff's attorney at his cost or whether the defendant will permit plaintiff's attorney or his representative to take photographs of said area.

11. State whether the defendant considered the plaintiff to be a competent worker prior to his accident aboard the vessel and annex a photocopy of plaintiff's personnel record hereto.

12. State whether the defendant inspected the area of the plaintiff's accident complained of herein immediately after said accident was known and, if so, state the names, addresses, ratings and Z numbers of the persons who made said inspection, the areas of the vessel inspected, and whether a report or reports were made as the result of said inspection and, in addition thereto, annex a photocopy of said report or reports.

13. State whether the defendant had a system or routine of Butterworthing cargo tanks on the vessel for the voyage in progress at the time of the plaintiff's accident complained of herein and, if so, set forth in detail the system or routine of Butterworthing of the cargo tanks, how often said Butterworthing equipment was used, the step-by-step procedure carried out to Butterworth cargo tank, the name and rating of the man or men who performed the duty at the time that the plaintiff was performing said duty and was injured, the name and rating of the officer who ordered said work, the name and rating of the men and officers who inspected the cargo tank area after the work was performed in order to ascertain that it was completed and, in addition thereto, whether any equipment, appurtenance or gear was provided to the men performing the Butterworthing with the plaintiff to lower and raise the Butterworthing equipment into and out of the cargo tank and, if so, set forth in detail the type of equipment that was provided by name, description, model number, manufacturer, and any other means necessary to specifically identify the equipment so provided.

14. State the weight of the entire Butterworthing equipment lowered into and raised out of the cargo tank including all lines, hoses and all other appurtenances to be lowered and to be lifted by the men performing the work, including the weight of the water in the hose or hoses.

15. State and identify in detail the Butterworthing System used by the plaintiff and his fellow workers at the time of his injury, including all hoses and lines incidental thereto, by manufacturer, name, model number, and all other means and methods necessary to fully identify said equipment and appurtenances and, in addition, thereto, annex photographs and literature or brochures of the said equipment and appurtenances in use at the vessel.

16. If more than one Butterworthing System was aboard the vessel on or about June 7 or 8, 1971, state whether all were substantially the same in operation, model number, weight, purpose and for general or specific use as a tank cleaner.

17. State the name, address and rating of the office or plaintiff's superior who ordered the plaintiff to join in the Butterworthing System operation to clean cargo tanks on or about June 7 or June 8, 1971.

18. State the substance of the orders given to the plaintiff by his superior when ordered to aid in the use of the Butterworthing System on June 7 or 8, 1971.

19. State where aboard the vessel said orders were given to the plaintiff.

20. State the time of the day and the date when the said orders were so given.

21. State the time when the work of the tank cleaning operation was started and was completed on June 7 or 8, 1971.

22. State when the plaintiff's superior was present for the entire period of the Butterworthing operation at the locale of the use of the Butterworthing System by the plaintiff and his co-workers in June, 1971.

23. State whether plaintiff's superior had the responsibility of determining the safety of the operation as performed by the plaintiff and other crewmen and, if so, did the superior make any determination of the manner and method of the operation insofar as it related to the safety thereof.

24. If the superior did not have the responsibility to determine the safety of the operation, set forth the name, address and rating of the superior who did have such responsibility and set forth whether such determination was made, whether it was in writing or oral, where and when certain report was made, to whom so made, and, in addition thereto, annex a photocopy thereof.

25. State whether the defendant by or through its employees made a report or log entry concerning the plaintiff's accident and, if so, set forth the name and address of the person having said report or log entry in his possession at the present time and, in addition thereto, annex a photocopy of said report or log entry.

26. Set forth the names, addresses, ratings and Z numbers of all eyewitnesses to the plaintiff's accident complained of herein.

27. State the names, addresses, ratings and Z numbers of all officers, crew members and eyewitnesses who have given oral or written statements or affidavits concerning the accident complained of herein, and the names of the persons to whom such statements or affidavits were made, the dates thereof, and the names and addresses of the persons who now have custody of said statements or affidavits and, in addition thereto, annex a photocopy of said statements or affidavits.

28. State whether there is any correspondence in the defendant's records or files between the defendant and the plaintiff relative to the accident alleged in the complaint and, if so, state the form of the correspondence, its date and the name and address of the person who now has custody of said correspondence and, in addition thereto, annex a copy of said correspondence.

29. State whether any treatment was given to the plaintiff by the defendant as a result of the accident and, if so, set forth the names, addresses, ratings and Z numbers of the persons or person who treated the plaintiff, the date of said treatment, the place of said treatment, the nature of said treatment and, in addition thereto, annex a photocopy of the medical logs and reports of said treatment.

30. State whether the defendant received any medical reports and/or bills from doctors or hospitals treating the plaintiff on or after June 6, 1971 and, if so, set forth the amounts of the bills, the date thereof and the name and address of the doctors or hospitals who treated the plaintiff, the nature of the treatment, the dates treated, by whom treated, and the diagnosis and prognosis set forth in the reports and, in addition thereto, annex a copy of all reports and bills.

31. Set forth in detail the defendant's understanding of how the accident complained of herein occurred as a result of all investigation and knowledge by the defendant or by the defendant's employees, representatives, agents, and the reason or reasons for the occurrence of the accident complained of herein.

32. If there is any claim by defendant of contributory negligence or assumption of the risk by the plaintiff, set forth in what manner the defendant claims the plaintiff was contributorily negligent or assumed the risk of the conditions which caused the accident complained of herein.

33. State whether the defendant claims the existence to the plaintiff of any prior medical condition which caused or contributed to the plaintiff's accident and/or injuries and, if so, state the nature of the prior existing condition and the manner in which it is claimed it caused or contributed to the plaintiff's accident and/or injuries, and the names and addresses of the physicians and hospitals who treated the plaintiff for the said conditions and the dates of said treatment.

34. State whether the plaintiff received a Master's Certificate in order to obtain medical treatment when he left the vessel and, if so, the date thereof and, in addition thereto, annex a copy of said Master's Certificate.

35. State whether the plaintiff received any money for his maintenance and cure and, if so, in what amount, for what periods and the name and address of the person from whom the said amount or amounts were received and, in addition thereto, state the reason for stopping the payment of maintenance and cure at the date set forth by the defendant and whether the defendant has any information of subsequent dates of the plaintiff being unfit for duty and the date that the defendant received such information.

36. State whether the plaintiff received any money for repatriation and, if so, in what amount, for what periods and the name and address of the person from whom the said amount or amounts were received.

37. State whether the plaintiff received any money for his unearned wages and, if so, in what amount, for what periods and the name and address of the person from whom the said amount or amounts were received.

Dated: New York, New York
December 31, 1973

Yours, etc.

FUCHSBERG & FUCHSBERG
Attorneys for Plaintiff

By: Edward A. Fuchsberg
A Member of the Firm
Office & P.O. Address
250 Broadway
New York, N.Y. 10007
212 962-2800

TO: HYDE DICKERSON & REILLY
Attys. for Defendant
61 Broadway
New York, N.Y.

4/01-73. A108

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

LEROY PORSS,

Plaintiff,

-against-

MARITIME OVERSEAS CORPORATION,

Defendant.

- X

OFFICE COPY

INTERROGATORIES

72 Civ 1600

TO:

RE

4-29-74

INTERROGATORIES ADDRESSED TO PLAINTIFF TO BE ANSWERED BY HIM IN WRITING AND UNDER OATH, PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE No. 33, DEFENDANT DEMANDS THAT, IN ACCORDANCE WITH THE DECISION OF THE SUPREME COURT IN HICKMAN v. TAYLOR, THE ANSWERS TO THESE INTERROGATORIES INCLUDE ALL THE PERTINENT INFORMATION GLEANED BY THE ATTORNEY FOR THE PLAINTIFF THROUGH HIS INTERVIEWS WITH WITNESSES AND THROUGH HIS OTHER INVESTIGATIONS IN ADDITION TO INFORMATION WITHIN THE PLAINTIFF'S PERSONAL KNOWLEDGE.

1. What is your present residence address?

2. (a) How long have you lived there?

(b) State your prior addresses during the last five years, noting the dates between which you lived at each address.

3. With whom do you reside at that address?

4. What is your Z number?

5. What is your Social Security number?

6. When and where were you born? If outside the United States, when did you first come to the United States?

7. Are you a citizen of the United States? If naturalized, when did you become a citizen of the United States?

8. What formal education have you received and when and where did you get it?

9. When and in what capacity did you first begin going to sea?

10. Set forth your merchant seaman employment record for the last 36 months immediately prior to the time you suffered the injury or illness alleged in your complaint, consisting of the name of each ship on which you served and the inclusive dates and capacities in which you served aboard each.

11. Have you been regularly employed ashore at any time during the last 8 years? If so, set forth the name and address of each employer, the period of each employment, your duties and the reasons each such employment was terminated.

12. (a) Set forth your military record, if any, consisting of your branch of service, your military or naval identification number, the inclusive dates of your service, your rank on entry and discharge, your theater of operations, and the type of discharge you received, and where so discharged.

(b) Have you ever been rejected for military service? If so, when, where, and why?

13. How much gross income did you report for Federal income tax purposes in each of your last four taxable years?

14. How tall are you?

15. Are you right handed or left handed?

16. Do you wear glasses? If so, when did you first begin wearing glasses and what is the prescription of your present pair?

17. Do you (a) speak, (b) read, (c) write English?

18. What foreign languages do you (a) speak, (b) read, (c) write?

19. How much did you weigh at the commencement of your last voyage prior to the time you suffered the injury or illness alleged in your complaint?

20. How much do you now weigh?

21. What is your present marital status?

22. Do you have any children? If so, how many and how old and what sex is each?

23. What Coast Guard licenses or certificates do you now hold and when was it first issued to you?

24. Have you ever been convicted of a crime? If so, when, by whom, and of what crimes were you convicted?

25. Are you a member of any maritime union? If so, what union, what kind of book do you now hold, are your union dues paid up and, if not, when and for what period did you last pay dues?

26. Have you ever been disciplined by the Coast Guard? If so, when, why, where were the hearings conducted, and what punishments did you receive?

27. Other than nicknames, have you ever used any name except that set forth in the caption? If so, what name or names?

28. Other than this proceeding, have you ever sued to recover damages, maintenance or statutory benefits for injury or illness? If so:

(a) When, where and against whom did you commence each such suit?

(b) For how much did you sue in each case?

(c) When and how did you suffer each alleged injury or illness?

(d) What injuries and illnesses did you suffer?

(e) Has any suit terminated and, if so, which one or ones, when did each terminate, and how much gross money, including amounts paid to or retained by your attorneys, did you receive in each case?

29. On what date and at what hour did you suffer the injury or illness alleged in your complaint in this suit?

(a) To whom did you first report this accident or illness?

(b) At what time did you first report this accident or illness?

(c) State the full nature of your duties on the se; watch at the time of your accident or illness?

(d) What were you actually doing when the said accident or illness of which you complain occurred?

30. At that time was:

(a) It clear, partly cloudy or cloudy?

(b) There any precipitation and, if so, what kind and was it heavy, medium or light?

(c) The sea adjacent to your ship rough, moderate or smooth?

(d) There any appreciable wind and, if so, was it strong, moderate or light?

31. Were you aboard the ship at that time?

(a) If so, where aboard ship were you?

(b) If not, where were you?

32. What were you doing at that time?

33. Were you on duty or off duty at that time?

34. Where was your ship at that time?

35. Did anyone initially witness your injury or illness for which you have brought this suit? If so:

(a) Were any of them fellow crew members?

(b) If any were fellow crew members, set forth the name and rating or other identification of each. Where were they at the time of the accident or illness and what were each of them engaged in doing at the time.

(c) Were any of them not fellow crew members?

(d) If any were not fellow crew members, do you know any of them by name or occupation? If so, set forth the names and/or occupations of each.

36. (a) When, where and in what capacity did you last sign on your ship prior to the time you suffered the injury or illness alleged in your complaint?

(b) Were you still serving in that capacity at the time you suffered the injury or illness alleged in your complaint? If not, in what capacity were you then serving?

(c) To what sea watch were you assigned when you signed on and what was the name or rank of your watch officer, if any?

(d) Were you still assigned to that sea watch at the time you suffered the injury or illness alleged in your complaint? If not, to what sea watch were you then assigned and what was the name or rank of your watch officer, if any?

37. If you shared quarters aboard ship with anyone as of the time you suffered the injury or illness alleged in your complaint, what was the name or rating of each of your bunk mates?

38. How much overtime did you earn between the commencement of your last voyage prior to the time you suffered the injury or illness alleged in your complaint, and said latter time?

39. If you were not ashore at the time you suffered the injury or illness alleged in your complaint, when, where and for how long had you last been ashore? Did you have any alcoholic beverages to drink while ashore at that time and, if so, what kind and how much?

40. If you were ashore at the time you suffered the injury or illness alleged in your complaint, how long prior to that time had you gone ashore? Between the time you went ashore and the time you were allegedly injured or made ill, did you have any alcoholic beverages to drink and, if so, what kind and how much?

41. Did you have anything in either of your hands at the time you suffered the injury or illness alleged in your complaint? If so, what did you have and in which hand or hands?

42. What was the first date, subsequent to that on which you suffered the injury or illness alleged in your complaint, that you:

(a) Were declared fit for duty by the Public Health Service?

(b) Sought gainful employment and what employment and where did you seek it?

(c) Registered at the union hall for another berth?

(d) Applied for unemployment benefits and where did you apply and how much benefit have you received to date?

(e) Resumed gainful employment and for whom, in what capac[illegible] and at what straight time wages were you hired?

43. Describe the manner in which you suffered the injury, if any, alleged in your complaint?

(a) Name and identify each officer, person, agent or other employee of the defendant through whose negligence you claim you were caused to become ill or injured.

44. Set forth each negligent act and omission by defendant which you claim caused or contributed to your alleged injury or illness.

45. Did those same negligent acts or omissions by defendant cause or contribute to the injury or illness of anyone else? If so, whom and when?

46. Do you claim that there was no negligence by you which caused or contributed to your alleged injury or illness?

47. Set forth the name and rating or other identification of every officer, agent and employee of defendant whose negligence you claim caused or contributed to your alleged injury or illness. Describe what each did or failed to do which you claim was negligent.

48. Do you claim that any unseaworthiness of your vessel caused or contributed to your alleged injury or illness? If so, describe each condition which you claim constituted such unseaworthiness.

49. Describe every dangerous, defective and unsafe condition (other than claimed unseaworthy conditions) which you claim caused or contributed to your alleged injury or illness. With respect to each such condition state:

(a) Whether actual or constructive notice by defendant is claimed.

(b) If actual notice is claimed, when, by whom and to whom it was given.

(c) If constructive notice is claimed, how long the condition had existed prior to the time you suffered your alleged injury or illness.

(d) Whether you reported the condition to any officer or agent of defendant and, if so, when and to whom.

50. What was the nature of the injury or illness which you suffered as alleged in your complaint?

51. Have you ever suffered the same or a similar injury or illness at any other time? If so:

(a) When did you suffer each such injury or illness?

(b) How did you suffer each such injury?

(c) What was the nature of each such injury or illness?

(d) Did you receive any professional treatment for any such injury or illness and, if so, where and by whom was such treatment given?

52. Have you ever made a claim without later suit against anyone other than defendant for damages, maintenance or statutory benefits by reason of the same or a similar injury or illness? If so:

(a) When and against whom did you make each such claim?

(b) How much did you claim in each instance?

(c) When did you suffer each injury or illness for which you claimed?

(d) Has any claim been settled and, if so, which one or ones, when, and for how much was each such claim settled?

53. Did you report your alleged injury or illness to any ship's officer? If so:

(a) When and where did you make each such report?

(b) What was the name or rank of the officer to whom you made each such report?

(c) What was the substance of each such report you made?

54. Did you receive treatment aboard your ship for your alleged injury or illness? If so:

(a) What was the name or rank of each person who rendered such treatment?

(b) When was such treatment first and last rendered by each such person?

(c) What was the nature of all such treatment?

55. Set forth your inpatient record for the last 8 years at every public and private hospital and clinic, consisting of

(a) The name and location of each facility?

(b) The dates you were admitted and discharged from each facility?

(c) Whether you were declared fit for duty on discharge and, if not, the prognosis on discharge?

(d) The nature of the injury or illness which caused you to be treated at each such facility?

(e) The nature of the treatment given you at each such facility?

56. Set forth your outpatient record since the date you suffered your alleged injury or illness, at every public and private hospital and clinic, consisting of:

(a) The name and location of each facility?

(b) The dates you were first and last treated at each such facility?

(c) Whether you were declared fit for duty following your last treatment at each such facility and, if not, the prognosis at that time?

(d) The nature of the injury or illness which caused you to be treated at each such facility?

(e) The nature of the treatment given you at each such facility?

(f) The number of times you were treated at each such facility?

57. Have you seen any private doctors since the date you suffered your alleged injury or illness? If so:

(a) What is the name and address of each doctor?

(b) On what dates did you first and last see each such doctor?

(c) Identify the person, if any, who referred you to each such doctor?

(d) What was the nature of the treatment, if any, given you by each such doctor?

(e) What was the total fee charged by each such doctor?

(f) Were any x-rays taken of your body? If so, where and when?

58. Since the date you suffered your alleged injury or illness, has any doctor recommended to you that you receive any special treatment or therapy? If so:

(a) What is the name and address of each such doctor?

(b) What was the substance of each such recommendation?

(c) When was each such recommendation made?

(d) Have you received the recommended treatment or therapy? If so, when and where did you receive it? If not, why?

59. Do you claim to have suffered any permanent disability as the result of your alleged injury or illness? If so, what is the nature of the disability?

60. Have you received any pre-sign-on physical examinations since the date you suffered your alleged injury or illness? If so:

(a) When did you receive each such examination?

(b) Identify the employer for whom each such examination was made?

(c) Were you, upon completion of any such examination, declared unfit for duty and, if so, when?

61. Do you claim that defendant owes you additional maintenance by reason of your alleged injury or illness? If so:

(a) How much maintenance has defendant paid you to date?

(b) How much maintenance do you claim is owed you and for what periods?

(c) What efforts did you make during those periods to mitigate the amount otherwise owed you?

62. Do you claim that defendant owes you any unearned wages by reason of your alleged injury or illness? If so:

(a) How much unearned wages have you received from defendant to date?

(b) How much unearned wages do you claim are owed you and for what periods?

63. Itemize the total special damages which you claim to have suffered to date as a result or by reason of your alleged injury or illness.

64. Have you or anyone on your behalf, including your attorney, taken any photographs in connection with your alleged injury or illness? If so:

(a) How many photographs?

(b) When, where, and by whom was each photograph taken?

(c) Where are the negatives or prints of each photograph? Give name and address of person taking said photograph.

65. Have you or anyone on your behalf, including your attorney, obtained any signed statement or report pertaining to your alleged injury or illness or to the cause or manner of or reason why you suffered said injury or illness? If so:

(a) When was each such statement or report obtained?

(b) What is the name of the person from whom each such statement or report was obtained?

(c) What is the name and address of the person who obtained each such statement or report?

(d) What is the name and address of the person who has possession of the original of each such statement or report?

66. Are you a licensed automobile operator? If so, please state:

(a) How long?

(b) In what states?

(c) The operator's license number for the state indicated?

67. Do you presently carry any other union card with any unions other than the National Maritime Union.

68. Do you presently wear any prosthetic devices or external support? If so:

(a) Are they for conditions unrelated to this occurrence?

(b) Describe the condition and type of prosthetic device.

(c) Do you or have you worn or used any prosthetic device since the occurrence of this illness or claim, the subject matter of this suit.

(d) If so, where were they purchased and when and for what cost.

(e) Was the prosthetic device used or worn by reason of medical prescription?

(f) Where, when and by whose prescription was the prosthetic device worn?

69. What is your known visual ability in terms of charted strength or weakness.

70. Do you wear any prescribed glasses to aid in your vision?

71. Are you near sighted?

72. Are you far sighted?

73. Do you wear glasses during all waking hours? If not, when?

74. Do you or have you ever suffered from impairment of any of your physical senses of smell, hearing or touch? If so, give dates of all periods of such impairment and whether treated by any medical or related therapy.

WILSON & HOPKINS
Attorneys for Defendant
116 John Street
New York, New York 10038
COrtlandt 7-9600

STATE OF NEW YORK
COUNTY OF NEW YORK } SS.:

Mary Ann Wilson , being duly sworn, deposes and says:

I am Office Manager for the attorneys for the within named Defendant , and on the 22nd day of May 1972 I served the within

INTERROGATORIES

upon

FUCHSBERG & FUCHSBERG, ESQUIRES
Attorneys for Plaintiff
250 Broadway
New York, New York 10007

by depositing a true copy of the same, securely enclosed in a post-paid wrapper, in a Post Office Box regularly maintained by the United States Government at 116 John Street, New York, New York 10038, directed to said attorney(s) at the above stated address(es) that being the address(es) designated for that purpose, between which places there then was and now is regular communication by mail.

Sworn to before me
this 22nd day of
May 1972.

WALTER L. HOPKINS
NOTARY PUBLIC, State of New York
No. 31-0959290
Qualified in New York County
Commission Expires March 30, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

4101-53.

LEROY PORSS,

Plaintiff,

-against-

MARITIME OVERSEAS CORPORATION,

Defendant.

ANSWERS TO INTERROGATORIES

72 CIV. 1500

Plaintiff, answering interrogatories by his attorneys, FUCHSBERG & FUCHSBERG, states as follows:

1. Plaintiff resides at ~~250~~ Woodworth Avenue, Yonkers, New York.

2. (a) Plaintiff has resided at the above address approximately 1 and 1/2 years.

(b) 2247 Virgil Place, Bronx, New York for approximately 6 months; Pine Terrace Apartments, Highland Falls, New York, approximately 6 months; KINGSTON AV. & 75 ST. CHICAGO, ILL. AND 8736 South Baltimore Avenue, Chicago, Illinois for the remainder of the 5 year period.

3. Plaintiff resides with his brother, Sulev Porss.

4. Plaintiff's Z number 1234564.

5. Plaintiff's social security number is 127 24 2220.

6. Plaintiff was born in 1928 in Estonia. Plaintiff first came to the United States in 1947.

7. Plaintiff is a citizen of the United States, becoming a citizen in 1953.

8. Plaintiff completed four years of elementary school in Estonia.

9. Plaintiff first became a seaman in 1947 as an Ordinary Seaman.

10. Plaintiff served on the SS"TEXAS" from 9/1/67 to 10/20/68; on the S/S "LINFIELD VICTORY" from 2/24/69 to 5/26/69;

on the S/S "STEEL WORKER" from 8/27/69 to 1/7/70; on the S/S "AZALEA CITY" from 2/11/70 to 5/14/70; on the S/S "OVERSEAS ALEUTIAN" from 6/6/71 to date of injury.

11. Plaintiff has been employed ashore as a carpenter in the construction industry, but does not know the names of the companies for who he worked or the dates of employment. Plaintiff does know that the work was obtained a number of years ago in Chicago, Illinois prior to 1966.

12.(a) Plaintiff served in the United States Army in 1951 and 1952 in Korea, receiving an Honorable Discharge with the rank of Corporal.

(b) Plaintiff has never been rejected for military service.

13 In 1970 plaintiff reported gross income of $8,006.55; in 1969 $3,225.83; in 1968 $11,085.58.

14. Plaintiff is 5' 7" tall

15. Plaintiff is right handed.

16. Plaintiff wears reading glasses only having slight prescription, for the past three years.

17. Plaintiff speaks English fairly well, reads with fair accuracy and writes poorly.

18. Plaintiff can speak Estonian.

19. Plaintiff weighed approximately 195 pounds at the commencement of the voyage.

20. Plaintiff now weighs approximately 192 pounds.

21. Plaintiff is divorced.

22. Plaintiff has two children, a daughter 8 and a son 11.

23. Plaintiff now holds an unlimited certificate on deck and as wiper issued to the plaintiff in 1966 in New York.

24. Plaintiff has never been convicted of a crime.

25 Plaintiff is a member of the Seafares International Union, holds a B book and is now paid up.

26 Plaintiff has never been disciplined by the Coast Guard

27. Plaintiff's given name in Estonia is Evald, anglicized to Leroy. Plaintiff still uses Evald as a middle name.

28. Plaintiff was involved in an automobile accident, believed in 1959. The suit has long since terminated and plaintiff did not receive any recovery

29. Plaintiff believes his injury was sustained on June 8, 1971 at about 9:20 p.m or slightly later.

(a) Plaintiff reported the accident to a fellow worker Schmitt and then to the Chief Mate.

(b) The Chief Mate was informed the following morning.

(c) Plaintiff was aiding in Butterworthing the ship's tanks.

(d) Plaintiff was aiding in raising the hose and the machine from the tank

30. (a-d) At the time the weather was clear, it was not raining, the sea was calm and the wind was light

31. Plaintiff was aboard the ship at the time

(a) Plaintiff was on the deck of the ship, aft of midship on the port side.

(b) No answer required.

32. Plaintiff was aiding in the Butterworth operation.

33. Plaintiff was on duty at the time.

34. The vessel was sailing from New Jersey to Louisiana.

35. Plaintiff was working with George Schmitt and

Frank (deck maintenance man). Plaintiff does not know how much each of them saw and cannot answer this question for them.

36. (a) Plaintiff signed on board the vessel on June 5, 1971 at Eagel Point, New Jersey as an Able Bodied Seaman.

(b) Plaintiff was still serving in that capacity at the time the injury was suffered.

(c) Plaintiff was assigned to the 12 to 4 watch. Plaintiff does not know the name of his watch officer.

(d) Plaintiff was still assigned to that sea watch and was on overtime watch at the time of the injury complained of herein.

37. Plaintiff shared quarters with George Schmitt, Able Bodied Seaman.

38 Plaintiff does not know the exact number of hours that he worked overtime aboard the vessel prior to the time of the accident involved herein. Defendant's payroll records will have that information.

39. Plaintiff was last ashore before signing on aboard the vessel.

40. No answer is required.

41. Plaintiff had the ship's hose in both hands at the time the injury was sustained.

42 (a) Plaintiff was first declared Fit For Duty on March 21, 1972 but still under medical care and treatment.

(b) Plaintiff is now employed for the first time since the accident involved herein.

(c) Plaintiff registered late 1972.

(d) Plaintiff was advised that he was not eligible for unemployment benefits.

(e) Plaintiff has now obtained his first employment

since the date of injury and will further answer this question in due course.

43. Plaintiff was pulled forward, wrenching his back, striking his knees when the weight of the machine and hose (700-800 pounds) was thrown upon the plaintiff.

(a) Plaintiff was injured by the other men working with the plaintiff and the Bos'n and also by all members who rendered the vessel unseaworthy.

44. The defendant was negligent in failing to provide proper equipment for the Butterworthing operation; failed to provide sufficient numbers of competent crew members to perform the operation; failed to inspect and determine the manner and method of the Butterworthing operation prior to its commencements, and the defendant was otherwise negligent.

45. Plaintiff does not know if any other person was injured at the time.

46. Plaintiff did not cause nor did he contribute to his injury.

47. The negligence of plaintiff's co-workers, the Bos'n and the officers who had failed to determine that the manner and method of the Butterworthing operation was safe.

48. The vessel was unseaworthy in failing to provide proper equipment to raise the hose and machine from the tank, in failing to provide sufficient numbers of seaman to perform the operation; in failing to provide competent seaman to perform the operation; in failing to provide competant officers who should have made a determination by prior examination that the manner and method of the operation was safe.

49. There were no conditions other than those above stated which caused or contributed to the plaintiff's injury.

50. Plaintiff sustained a severe, acute lumbo-sacral strain, which was treated by the medical officer aboard the ship and which required his admission to the Public Health Service Hospital at New Orleans, Louisiana on June 12, 1971, suffering with a bracing of the lower back to the left and with right paravertebral muscle spasm and decreased, painful range of motion of the lumbo-sacral spine, with radiation of pain down the right thigh, with pain and tenderness of the lumbo-sacral spine region; with treatment consisting of bed rest, codeine, analgesics, muscle relaxants; and the plaintiff was discharged not fit for duty to his home in New York for continued treatment and was treated at the Public Health Service Clinic in New York City suffering with the same symptoms and with pain in the right testicle upon any lifting, with pain radiating down both legs, with pain to the back of the neck and head; with sexual weakness; with continued treatment to August 6, 1971 when marked Fit For Duty in the lumbo-sacral region, with medication of librium, with continued pain in the upper thoracic spine which required continued treatment at the Public Health Service Clinic in New York City for pain in the lower back region and with slight numbness of the right leg until March 10, 1972; when the plaintiff was marked Fit For Duty with a lumbo-sacral corset, with continued treatment by the Public Health Service for chronic low back strain; with examination on April 14, 1972 indicating paravertebral muscles spasm, motion limited and painful, piriformis stretch test and Patrick signs positive, greater on the right; tenderness at the lumbo-sacral junction, midline; vertical concussion test positive; with lower back pain, with radiation of pain, with the diagnosis of chronic unstable low back.

51. Plaintiff never suffered the same or similar injury before the accident involved herein.

52. Plaintiff never made any claim for the same or similar injury before the claim involved herein.

53. Report of the injury was made to the Chief Mate, the following morning that the plaintiff was aiding in the Dutterworthing operation and was injured

54 The plaintiff received treatment consisting of liniament and pills from the Chief Mate and from another aide thereafter.

55. Plaintiff wa inpatient at the Public Health Service Hospital, New Orleans, Louisiana from June 12, 1971 to June 15, 1971 for injuries suffered in the accident involved herein. The plaintiff was not fit for duty on discharge.

56. The plaintiff was treated outpatient at the Public Health Service, San Francisco, California once in August, 1967 for prostatitis; at the Public Health Service, Staten Island five times in November and December, 1968 for a urological disturbance and was discharged fit for duty; at the Public Health Service Clinic, New York City, six times in June and July 1969 for abdominal pains and was discharged fit for duty; and at the Public Health Service, San Francisco, California, twice in January and February, 1970 for a urological problem, and was discharged fit for duty, and the plaintiff was treated at the Public Health Service Clinic, New York City from June 21, 1971 through August, 1972 and subsequent to that date for injuries involved herein nineteen times through August 17, 1972 and was discharged fit for duty.

57. (a) Plaintiff saw Dr. George Seaman, 99 Lafayette Avenue, Brooklyn, New York.

(b) On April 14, 1972

(c) Plaintiff was referred to Dr Seaman for examination by his attorney.

(d) Plaintiff was seen by Dr Seaman for examination only.

(e) The patient was not billed by Dr. Seaman.

(f) X-rays were taken by Dr Seaman's office on April 14, 1972 at his office.

58. Plaintiff has not been recommended by any doctor to have special treatment or therapy except for instructions of the Public Health Service doctors.

59. Plaintiff still suffers pain and limitation of motion in the lower back region and some loss of sensation radiating to the legs.

60. This interrogatory cannot be answered at this time.

61. The defendant is believed to have paid two months of maintenance and cure.

62. Plaintiff believes that the voyage ended when he left the vessel following his injury.

63. Plaintiff's medical expenses were borne by the United States Public Health Service.

Plaintiff lost approximately one and one-half years from employment and was earning approximately $800 per month at the time of the injury, for a total loss of earnings of approximately $14,400.

64. Neither plaintiff nor anyone on his behalf has taken any photographs in connection with the injuries sustained.

65. Neither plaintiff nor anyone on his behalf has obtained any signed statement or report pertaining to the injuries sustained herein.

66. Plaintiff is a licensed automobile operator.

(a) Since 1949

(b) In New York State

(c) P13683 99865 318107128

67. The plaintiff carries an S.I.U. card.

68. The plaintiff has worn a lumbo-sacral corset prescribed by the physicians at the Public Health Service Clinic for injuries sustained in the accident complained of, all as set forth in the records of the Public Health Service Clinic.

69. Plaintiff believes that his eye sight is good.

70. Plaintiff wears glasses for reading only because of minor weakness of the right eye.

71. Plaintiff does not believe that he is near-sighted

72. Plaintiff does not believe that he is far-sighted.

73. Plaintiff does not wear glasses all his waking hours, but only when he is reading for long periods of time.

74. Plaintiff did not suffer from any impairment of the senses before the accident, but has sustained a numbness of the right leg, which affects the sense of touch.

Dated: New York, New York
February 23, 1973

FUCHSBERG & FUCHSBERG
Attorneys for Plaintiff

BY: Seymour Fuchsberg
A Member of the Firm
Office & P.O. Address
250 Broadway
New York, N.Y. 10007

VERIFICATION

STATE OF NEW YORK)
CITY OF NEW YORK : SS:
COUNTY OF NEW YORK)

LEROY PORSS

being duly sworn, deposes and says, that he is the plaintiff in the within action that he has read the foregoing

ANSWERS TO INTERROGATORIES

and knows the contents thereof; that the same is true to he own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believe it to be true.

Leroy E. Porss

LEROY E. PORSS

Sworn to before me this 13
day of March, 1973.

HARVEY GOLDSTEIN
Notary Public, State of New York
No. 30-6570200
Qualified in Nassau County
Commission Expires March 30, 1974

4101-53

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

LEROY PORSS,

Plaintiff,

-against-

MARITIME O''ERSEAS CORPORATION,

Defendant.

SUPPLEMENTAL ANSWERS TO INTERROGATORIES

72 CIV. 1600

----------X

Plaintiff, further answering interrogatories propounded by the defendant, states as follows:

42(a). Plaintiff's recollection is that he was declared fit for duty about two months after the accident involved herein, was then declared unfit for duty and was again declared fit for duty on March 21, 1972, still under medical care and treatment.

(b). Plaintiff sought gainful employment as a seaman at the Union Hall when he was declared fit for duty, although still suffering some pain.

(c). Plaintiff first registered at the Union Hall when he was declared fit for duty.

(d). Plaintiff was advised that he was not applicable for unemployment benefits.

(e). Plaintiff resumed gainful employment as a seaman on the "LONGVIEW VICTORY", believed to be from November 20, 1972 to March 9, 1973 at the same base wages earned on the "OVERSEAS ALEUTIAN".

60(a). Plaintiff received a pre-sign on physical examination before joining the "LONGVIEW VICTORY".

(b). The examination was conducted by the physician employed by the owner or operator of the "LONGVIEW VICTORY".

(c). Plaintiff was marked fit for duty.

61 (a). Plaintiff claims that the defendant owes maintenance and cure for all periods until treatment was concluded by the Public Health Service prior to plaintiff joining the "LONGVIEW VICTORY".

(b). Plaintiff's recollection is that defendant paid maintenance and cure until he was first marked fit for duty, and was not paid maintenance and cure for any subsequent not fit for duty periods although the plaintiff was so marked by the Public Health Service for injuries sustained in the accident on the "OVERSEAS ALEUTIAN". The plaintiff is owed for a number of months and more at the per diem rate of $8.00.

(c). Plaintiff was unfit for duty and recuperating from his injuries sustained in the accident complained of herein.

62. Plaintiff's best recollection is that he was separated from his ship at the end of the voyage and is not owed any unearned wages by the defendant.

Dated: New York, New York
December 28, 1973

FUCHSBERG & FUCHSBERG
Attorneys for Plaintiff

BY: _____
A Member of the Firm

Office & P.O. Address
250 Broadway
New York, N.Y. 10007

212-962-2800

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

LEROY PORSS, being duly sworn, deposes and says that deponent is the plaintiff in the within action; that deponent has read the foregoing Further Answers to Interrogatories and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

Leroy Porss

LEROY PORSS

Sworn to before me this

7 day of January, 1974

Notary Public, State

4151-53 A134

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

LEROY PORSS,

Plaintiff,

- against -

MARITIME OVERSEAS CORPORATION,

Defendant.

----------x

OFFICE COPY

ANSWER

72 Civ. 1600

FILE COPY
HAIGHT, GARDNER, POOR & HAVENS
ONE STATE STREET PLAZA
RECEIVED
ENTERED
BY: M - 4-29-74.

For its answer to the complaint, defendant states:

FIRST: Admits that at all times mentioned in the complaint defendant was a corporation with offices within this District; that it was general agent for the owner of the S.S. OVERSEAS ALEUTIAN; that plaintiff was a seaman employed on board said vessel by its owner. Denies all other allegations of the complaint.

AS AND FOR A FIRST SEPARATE AND PARTIAL OR COMPLETE DEFENSE, DEFENDANT ALLEGES:

SECOND: If plaintiff sustained injury as alleged, which is denied, such injury arose out of certain risks, dangers and hazards at and before the alleged injury was sustained and all of said risks, dangers and hazards had been assumed by plaintiff.

AS AND FOR A SECOND SEPARATE AND COMPLETE PARTIAL DEFENSE, DEFENDANT ALLEGES:

THIRD: If plaintiff sustained any injury as alleged in the complaint, which is denied, said injury was caused in whole or in part by plaintiff's own negligence and was not caused or contributed to in any manner by any negligence of defendant or by any unseaworthiness of the vessel.

WHEREFORE, defendant demands judgment that the complaint be dismissed with costs and disbursements of this action.

WILSON & HOPKINS
Attorneys for Defendant
116 John Street
New York, New York 10038
COrtlandt 7-9600

By WALTER B. HOPKINS
A Member of the Firm

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

RECEIVED
OVERSEAS CORP'
APR 2[illegible] 1972
A.M.
[illegible]

72 CIV. 1600

4101-53

CIVIL ACTION FILE NO.....

LEROY PORSS,

Plaintiff

v.

MARITIME OVERSEAS CORP.,

Defendant

SUMMONS

SEAMAN'S ACTION

PLAINTIFF DEMANDS TRIAL BY JURY

[illegible] ENTERED [illegible] 4-29-14

To the above named Defendant :

You are hereby summoned and required to serve upon FUCHSBERG & FUCHSBERG

plaintiff's attorney , whose address is 250 Broadway, New York, N. Y. 10007

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint.

JOHN LIVINGSTON
Clerk of Court.

E A Beckles
Deputy Clerk.

Date: APR 19 1972
New York, New York

[Seal of Court]

Note:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

- x

LEROY PORSS,

Plaintiff,

-against-

MARITIME OVERSEAS CORP.,

Defendant.

- x

Rule 9(h) Action to recover Maintenance and cure, Damages, Attorneys' fees, etc.

COMPLAINT

SEAMAN'S ACTION

Plaintiff demands Trial by Jury

Under Jones Act for Personal Injuries

ACTION UNDER SPECIAL ACT OF CONGRESS ENABLING SEAMEN TO SUE WITHOUT PREPAYMENT OF COSTS OR THE GIVING OF SECURITY THEREFOR.

Plaintiff, by his attorneys, FUCHSBERG & FUCHSBERG, complaining of the defendant, states and alleges upon information and belief, as follows:

AS AND FOR A FIRST CAUSE OF ACTION

FIRST: This is a case of admiralty and maritime jurisdiction as hereinafter more fully appears, within the meaning of Rule 9(h) of the Rules of Civil Procedure.

SECOND: At all times hereinafter mentioned the defendant was and still is a corporation duly licensed by the State of New York, doing business in and having an office for the transaction of said business in the Borough of Manhattan, City and State of New York.

THIRD: At all times hereinafter mentioned there was and is in full force and effect the Act of Congress known as the Jones Act, 46 U.S.C. §688, which Act is applicable hereto.

FOURTH: At all times hereinafter mentioned there was and is in force and effect the non-statutory general maritime law of the United States, which law is applicable hereto.

FIFTH: At all times hereinafter mentioned, the defendant was the owner of a certain vessel known as the S.S."OVERSEAS ALEUTIAN".

SIXTH: At all times hereinafter mentioned, the defendant operated, managed and controlled the aforesaid vessel.

SEVENTH: At all times hereinafter mentioned, the plaintiff was employed by the defendant as a seaman aboard the aforesaid vessel.

EIGHTH: At all times hereinafter mentioned, all of the officers and crew members aboard said vessel were employed by the defendant.

NINTH: On or about June 8, 1971 while the plaintiff was properly engaged in the course of his employment aboard the aforesaid vessel, in furtherance of ship's business and in aid of navigation, he was caused to be suddenly and violently thrown forward, and sustained severe, painful and permanent injuries to his person, all of which was wholly and solely caused by the negligence of the defendant, and by its failure to provide the plaintiff with a seaworthy vessel.

TENTH: By reason of the foregoing, plaintiff was caused to sustain severe, painful and permanent injuries to his person, was incapacitated from attending to his usual duties and vocation, resulting in his suffering loss of earnings thereby, and was required and will be required to incur obligations for hospitalization, medical treatment and nursing care, and the plaintiff was otherwise injured all to his damage in the sum of Two Hundred Thousand ($200,000.00) Dollars.

AS AND FOR A SECOND CAUSE OF ACTION

ELEVENTH: Plaintiff repeats and realleges each and every allegation contained in the First Cause of Action with the same force and effect as though fully set forth herein at length, and in addition thereto alleges:

TWELFTH: It was the duty of the defendant to provide the plaintiff with his maintenance and cure upon plaintiff's becoming sick or injured while in the employ of the defendant.

THIRTEENTH: Plaintiff became disabled, as heretofore described, but defendant failed, neglected and refused to provide plaintiff with the expenses of his maintenance and cure, all to his damage in the sum of Twenty Five Thousand ($25,000.00) Dollars.

FOURTEENTH: The plaintiff demanded, but defendant refused to pay said maintenance and cure and, by reason of the foregoing, plaintiff was compelled to retain an attorney to represent him in this matter.

WHEREFORE, plaintiff demands judgment against the defendant in the sum of Two Hundred Thousand ($200,000.00) Dollars in the First Cause of Action, and in the sum of Twenty Five Thousand ($25,000.00) Dollars in the Second Cause of Action together with reasonable attorneys' fees thereon, together with costs and disbursements of this action.

FUCHSBERG & FUCHSBERG

By Seymour Fuchsberg
A Member of the Firm
Office & P. O. Address
250 Broadway
New York, N. Y. 10007
Telephone: 962-2800

TRANSCRIPT OF TESTIMONY

(In the robing room)

MR. GOLDSTEIN: Good afternoon, your Honor. May I offer my apologies.

THE COURT: What was the trouble?

MR. GOLDSTEIN: There was no trouble, Judge. I came downstairs, and it was five minutes after 2. Your name isn't on any list downstairs. Nobody could tell me where you were. I asked the guards down there and they said, "Oh, no, we are not allowed to tell you."

THE COURT: Didn't Mr. Coyne tell you?

MR. GOLDSTEIN: I don't have it on the message, Judge.

THE COURT: All right.

MR. GOLDSTEIN: I wandered up to the sixth floor clerk, and they finally were able to find out where you were, and I came up here.

THE COURT: Sit down. I want to ask you a few questions. I want the name of the partners in Fuchsberg now.

MR. GOLDSTEIN: Oh, the names of the partners are Abraham Fuchsberg, Seymour Fuchsberg.

THE COURT: Any other Fuchsbergs?

MR. GOLDSTEIN: No. There are three more partners, Judge, if you want them.

THE COURT: All right. I just want to mention that in connection with the case.

I wanted to tell this jury what the case is about. It involves butterworthing, right?

MR. GOLDSTEIN: Right.

THE COURT: And I want to read a part of this that is from Words and Phrases and it is from a Fed. Supp. case. I will read a part of it only.

Now will you tell me what you are going to claim about this claim? One, inadequate number of men; is that it?

MR. GOLDSTEIN: Yes, sir.

THE COURT: Inadequate number of men. And what happened? They dropped a hose?

MR. GOLDSTEIN: One of them dropped a hose. Well, he didn't drop the hose.

THE COURT: What did he do?

MR. GOLDSTEIN: The hose slipped out of his hand. He lost control of the hose.

MR. STEARNS: Your Honor, the testimony at the deposition is that both dropped it simultaneously.

THE COURT: That what?

MR. STEARNS: Both dropped it at the same time.

MR. GOLDSTEIN: Not the plaintiff.

MR. STEARNS: The two other men.

THE COURT: The two men dropped the hose, right? Two men dropped hose.

MR. GOLDSTEIN: We don't know that they dropped it simultaneously, Judge.

THE COURT: I am not going to say that. I am going to say it is alleged that the men dropped the hose. That is enough, isn't it? You can say what you like on the opening statements.

MR. GOLDSTEIN: Judge, it is not that they dropped it.

THE COURT: What did they do, fumble it?

MR. GOLDSTEIN: They simply let it slip. They were supposed to be pulling it up, and they stopped pulling it up. And then because of their losing control over the hose, all of the weight fell upon Mr. Porss, who was also holding it.

THE COURT: In some way the hose got away from them, you claim?

MR. GOLDSTEIN: Yes.

THE COURT: That is what you claim.

MR. GOLDSTEIN: Right.

MR. STEARNS: They let go of the hose is generically accurate from what he has testified to.

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MR. GOLDSTEIN: But I don't want to make it sound like they did it purposely, Judge. They didn't leave it go, you know, saying, "Here here, here I am."

MR. STEARNS: There is no other explanation of the accident.

MR. GOLDSTEIN: Please, let me try my case, you try yours.

THE COURT: All I want to know is what you claim, counselor. What do you claim these men did?

MR. GOLDSTEIN: Lost control of the hose, Judge.

THE COURT: And then was he hit by the hose?

MR. GOLDSTEIN: No, Judge. He was just pulled off balance, because he suddenly had the weight of the entire hose and the machine upon him.

THE COURT: It fell?

MR. GOLDSTEIN: He was pulled forward and down to his knees.

THE COURT: Lost balance.

MR. GOLDSTEIN: He didn't lose his balance, Judge. He was thrown off balance.

THE COURT: All right, thrown off balance. Very well. Any other particular questions to ask the jurors?

MR. STEARNS: No, sir.

THE COURT: All right, we will go through the

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usual --

MR. STEARNS: If I might say, the second part of this description is inappropriate to this case.

THE COURT: I was going to take that out. Mark what is out.

MR. STEARNS: Everything is here.

THE COURT: This hundred mile rule, that had nothing to do with it?

MR. GOLDSTEIN: No, nothing to do with it.

THE COURT: What was the date of this accident, again?

MR. STEARNS: June 8, 1971.

MR. GOLDSTEIN: Correct.

THE COURT: Where was it?

MR. STEARNS: At sea, between Eagle Point, New Jersey, and Louisiana.

MR. GOLDSTEIN: Yes.

THE COURT: Coastal vessel?

MR. GOLDSTEIN: Yes.

MR. STEARNS: Yes.

THE COURT: Let us go.

(A jury of six and two alternate jurors were impaneled and sworn.)

THE COURT: Now I want to say a word to the eight

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jurors now in the box, six of whom, the first six -- presumably at least, unless there is something that might happen -- will compose the jurors who will deliberate on the verdict in this case.

In the first place, this case will be tried on a split basis, as we call it. The first issue will be solely the question of liability. That is, you will decide whether or not this defendant is liable to this plaintiff for the claims made, which you will hear explained to you. Then if there is affirmative vote on that, damages will be determined by the same jury.

I wish to instruct you as to your general conduct during a trial. First, do not talk to anyone about this case. Secondly, do not permit anyone to discuss the case wwth you. Thirdly, do not discuss the case amongst yourselves until you ultimately retire to determine your verdict. Lastly, keep an open mind throughout.

There will be a short recess. The clerk will show you where to go.

(The jurors left the courtroom.)

THE COURT: How long do you want to open, Mr. Goldstein? Fifteen minutes enough?

MR. GOLDSTEIN: I think so, Judge.

THE COURT: You will have up to fifteen, then, also,

Mr. Stearns.

MR. STEARNS: Thank you.

THE COURT: We will have a short recess.

(Recess)

(Jury not present)

MR. GOLDSTEIN: If your Honor please, may I make an application?

THE COURT: What is the application?

MR. GOLDSTEIN: I should like to adjourn today after the opening by both attorneys.

THE COURT: Why?

MR. GOLDSTEIN: As your Honor knows, I was not able --

THE COURT: No, I don't know.

MR. GOLDSTEIN: -- to get Mr. Porss until -- over the weekend I did not see him.

THE COURT: Why do you want to adjourn it for that reason?

MR. GOLDSTEIN: I should like to discuss the matter with Mr. Porss.

THE COURT: Haven't you done that before?

MR. GOLDSTEIN: No, sir, I did not, because it had never come down to that point. I was in court all morning; I was out in Nassau County, in Supreme Court, Nassau.

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I got back to my office at about five minutes to 2 --

THE COURT: I will as an extraordinary procedure agree to do so.

MR. GOLDSTEIN: Thank you, sir.

THE COURT: What ought to happen is, you ought to have to pay a sanction to your adversary, but I am going to waive that.

MR. GOLDSTEIN: Thank you, sir.

THE COURT: Or to the Court for the delay.

(Recess)

(Jury present)

THE COURT: Members of the jury, this is the time when the attorneys make what is called opening statements. An opening statement is an expression by each lawyer as to the proof which he expects his client to produce or what might not be produced by the opposite side. I am not going to explain any further law, because that will await my charge to you after the conclusion of the proof.

This is not evidence, of course. The evidence comes from individuals who are witnesses and who take the stand and under oath testify, or from exhibits which are introduced into evidence, perhaps some documents of one kind of another, or it may be from photographs or it may be from what is called a deposition, which is a statement

resulting from an examination before trial of a witness, at which the witness testifies under oath and the testimony is transcribed by a reporter and read and signed under oath by the witness himself, and portions of it may in certain instances be read.

First, then, for the plaintiff: Mr. Goldstein.

MR. GOLDSTEIN: Thank you, sir.

Ladies and gentlemen of the jury, under the federal system, of course, the system of jury picking does not allow any attorney to get to know the jurors, and, because of that, cases kind of come up quickly, and attorneys before they realize it are actually before the jury and discussing the case.

As the judge has told you, and it is true, this is the time when both attorneys would come and simply give you a summary of what they expect to prove. This is the plaintiff's position at this moment.

You will hear that Leroy Porss, who was born in Estonia and came to this country in the late 1940's, for many years was a carpenter while in this country. He had been a seaman and had left the sea back in 1948, and from 1948 up to 1966 had been a carpenter in various jobs in the United States. Of course, he is a United States citizen long since.

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In 1966 he decided to go back to work as a seaman, and in 1971, on June 6, joined a vessel owned by the defendant and operated by the defendant. The name of that vessel was the Overseas Aleutian. The Overseas Aleutian was a coastal ship, that is, it went from one port within the United States to another port within the United States. It didn't go on ocean voyages as such. Of course, it went into the ocean, obviously, but it didn't go on what we would call worldwide voyages, it didn't go to Europe, didn't go to Asia. These were coastal voyages.

Although at other times it might well have, but for this particular voyage the ship was going from an area or a port in New Jersey to a port down in Louisiana. During that trip from New Jersey to Louisiana, sailing down the coast of the United States, an accident occurred to Leroy Porss. It is that accident for which this lawsuit has been brought.

Leroy Porss joined that ship, as I said, at a port called Eagle Point, New Jersey, on June 6, 1971. On June 8, 1971, just two days after he joined the ship, he was hurt. Now, that didn't give him any chance to know anyone on that ship, didn't give anyone much chance to know him. So he is at this point, in 1971, somewhat of a vague figure on board the ship a couple of days. And you can well understand how

that could happen: No. 1, being there only a couple of days; No. 2, not meeting everybody on board the ship, and in fact meeting a very few people in the two or three days that he was there, in the couple of days after, until the ship reached Louisiana. For when the ship did reach Lousiana, Leroy Porss was taken off the vessel and he was never on that vessel again, never sailed with those men again. So you can understand that their memory of him is somewhat dim.

In any event, the ship was going through a system called butterworthing. Butterworthing is a technical term for cleaning out the tanks of the vessel.

Can we go back and perhaps I can help you to understand exactly what happened. I know, of course, that nobody here has been a seaman at any time -- you were asked that question by the judge -- and of necessity you simply don't know nor would anybody or nor could anybody expect that you would know exactly what work a seaman does. But there is a system called butterworthing, whereby a machine, having holes in it and the hose attached to it, is lowered down into the tanks of the ship -- the tanks are another name for the holds of the ship where the cargo is kept -- and the butterworthing machine is simply lowered down, and water is driven through the hoses under pressure down into the machine at the bottom of the tanks.

If I may use a pen, assume that this is the hose and this is the machine, the hose being attached to the machine, the machine then starts to spin around quickly, and the water comes pouring out, just like a showerhead, except that it is a rotating showerhead. The water that pours out sprays the walls of the tank. That is how the tank is washed down. It is an absolute necessity, because you can understand that at different times different types of cargo are in those tanks. One cargo might contaminate another cargo, such as if you had oil one day and grain the next day, if you didn't wash the oil out, the oil would get into the grain and contaminate the grain.

So you can understand that this butterworthing system is a common practice aboard ships. It is something that seamen know they have to do. It is something that ship owners know they have to do. There is no question that almost all ships at one time or another, that have tanks, that is, that have the type of cargo that would require a butterworthing process, undergo that process many, many times during the lifetime of a ship.

The way the process works is that the hose is lowered down with the machine -- and the machine itself, by the way, is not that big -- but it is lowered down into the tank, and after that tank has been washed down for approxi-

mately a half hour or so, the hose is pulled up -- the hose, actually, and the machine are just pulled up. They are pulled up by hand.

You get four people working on the operation, or there should be four people working on the operation to pick up that hose. One pulls up the hose, one pulls the hose away from the man who is pulling the hose up out of the hold. Another man is pulling the line that is also attached. There is a line that they use to pull up also. The fourth man stands there just to make sure that nothing has happened to any of the other three men. And he helps along.

In this way the entire process is repeated over and over again for the various tanks aboard the ship, that is, the ship doesn't have just one huge tank. The belly of the ship, that is, the inside of the ship, encompasses one large opening; it encompasses a lot of small openings with walls in between, each opening being called a tank, each opening has what is similar to a manhole cover at the top. And the manhole cover is opened up, and that is the way you get into the tank and out of the tank.

So that when they drop the machine and the hose down and they pick it up again, they are doing it just so that they can start to repeat the operation on the next tank, and then after that the next tank.

As a matter of fact, they have a number of these machines on board a vessel, and they are working on a number of tanks at the same time.

So again you can see it becomes a bit complicated, and it is a complication that involves a time factor, that is, they don't set up all of the machines to go down into the holds at the same time. They set it up in a time sequence, so that while one machine is washing one tank, they pull up the machine out of another tank. And vice versa. Then when they are pulling up a machine out of another tank, another machine is busy washing another tank. This process goes on for a number of hours until ultimately all of the tanks are washed.

That is called butterworthing. Butterworthing is a term that you are going to be hearing a lot about, because that is what this lawsuit is about: the fact that some of the men who were working with Mr. Porss -- didn't really know him, because he had just joined the ship, but who were working with him because they had been ordered to do so by their superior officer -- they were working, and one or more of the men, and we don't know which, lost control of the hose that he was pulling up. And, losing control of the hose, all of the weight that he was holding shifted onto Mr. Porss. And Porss, holding up this huge weight now -- more than one

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man would normally --was thrown forward by the weight that he was holding and he was driven down to his knees and he hurt his back.

The injury that he suffered is what we are suing about. We claim --

THE COURT: That is not, of course, before us at this time.

MR. GOLDSTEIN: No. I haven't mentioned the extent of the injury, Judge, nor would I. I know I am not allowed to at this point.

THE COURT: All right.

MR. GOLDSTEIN: It is the claim of the plaintiff that the failure of that seaman to do the work properly caused the injury to Leroy Porss, and for that we are entitled to damages. It is the claim of the plaintiff that not sufficient number of men were put on that particular job, so that when one man lost control, there was nobody else there to control this weight of the hose filled with water and the machine that was being picked up out of the hold.

All of these things -- the unusual weight, the unusual problems of balancing that weight, falling upon Mr. Porss, he being unable to physically do the work that he was forced to do at that moment -- caused the injury. We are concerned and ask you for a verdict for the defendant's

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failure to provide him with a sufficient number of men to do the job and for the failure of one of his fellow seamen to do his job properly, that is, control the hose.

The Court will tell you all of the law concerning these things. The Court will tell you about the law concerning the duties of ship owners to give sufficient men, to give competent men to do a job, and the result that you draw from their failure to do so, if you decide that in fact there was either an insufficient number of men or an incompetent man to do the work.

That is why we do ask you, indeed, for a decision and a verdict in favor of Leroy Porss. Thank you.

THE COURT: For the defendant: Mr. Stearns.

MR. STEARNS: Your Honor, Mr. Goldstein, ladies and gentlemen:

I am going to be brief. This is a case of a seaman employed aboard a ship owned by Maritime Overseas, a corporation that I represent in this case.

As in all cases, particularly cases, I think, of accident claims, but all cases in general certainly, the details of the claim are, of course, of paramount importance. Plaintiff's attorney has said that there was an insufficient number of men, that someone, one or more men, lost control, and that as a result Mr. Porss was injured. But there is no

description given -- perhaps there will be in the testimony; I ask you to listen for it -- of exactly what happened. This is a very general description that you have been treated to, insufficient number of men, somebody losing control, and an accident.

As yet, no connection has been established or offered for these circumstances and the event alleged. This is something that I mentioned just as illustration for the purpose of understanding that the details here are of paramount importance.

Sitting on that desk is the transcription of a deposition of Mr. Porss given in 1972. At that time he was testifying under oath. Certain portions of that testimony will be read to you. As I read it, his claim in 1972 was that while handling a hose with two other men, lifting it out of a tank, the other two men let go at the same time, causing him to be knocked to his knees by the force of the weight of some 500 pounds, which he alleges that he and two other men were lifting.

500 pounds is just a detail, but here it is a very important detail. Two men letting go at the same time is another detail but a very important detail.

Another very important detail is that Mr. Porss has admitted, he does not even claim, that when he reported

this accident to the officer in charge, he mentioned the manner that this accident allegedly occurred.

We have taken the deposition of two seamen who, I am sure, Mr. Goldstein will say both have a very vague recollection of Mr. Porss. However, Mr. Porss in 1972 was able to name and, if my recollection serves, describe the men he was working with. We have by deposition, because they are seamen and not now available, taken their testimony under oath. Their names are George Schmidt and Angelo Antoniou, the bosun being Antoniou, and the AB, able-bodied seaman, Mr. Schmidt. Mr. Schmidt is one of the guys that Mr. Porss claims let go. In his deposition he denied that any such letting go had ever occurred.

So, as you see, in this case there will be a very sharp question as to what if anything happened. That being the case, the credibility of Mr. Porss is very much in issue.

I ask you to pay very close attention to the question of credibility in this case,and to do that and properly evaluate that, please pay very close attention to the details. Thank you.

THE COURT: The case will now be adjourned until tomorrow morning at 10 o'clock. Please heed my instructions which I previously gave you and come a little before 10 tomorrow morning. Thank you very much.

(The jury left the courtroom.)

THE COURT: I want to ask you, Mr. Goldstein, about something. Is there still any claim for maintenance and cure? Yes or no.

MR. GOLDSTEIN: I am not quite sure, Judge, because we don't know --

THE COURT: When are you going to know, counselor?

MR. GOLDSTEIN: I am going to ask the defendant to produce whatever records they have concerning the maintenance and cure.

THE COURT: You ought to know something about it by now.

MR. GOLDSTEIN: The plaintiff --

THE COURT: This should have been prepared, counselor.

MR. GOLDSTEIN: Plaintiff does not know, Judge.

THE COURT: All I can say is, if that is so, I don't know whether to prepare a charge for maintenance and cure or not. If you want to stipulate that the Court determine it, then you don't have to file any request to charge.

MR. GOLDSTEIN: Perhaps we can ask the defendant's attorney at this time what proof he has that any maintenance and cure was paid.

THE COURT: I don't know that he has to show that. You have to show that it was not paid, don't you? I don't know that there is any such rule as you suggest.

MR. GOLDSTEIN: Then let us assume, Judge, that until I have any proof to the contrary, I do make a claim for maintenance and cure. In the event that no proof is --

THE COURT: Will you please by tomorrow morning state how much is claimed?

MR. GOLDSTEIN: Yes, I will.

THE COURT: And two, whether or not you wish to have a jury verdict on that.

MR. GOLDSTEIN: Yes, I do wish to have a jury verdict on it.

THE COURT: State by tomorrow morning when court commences how much is claimed.

MR. STEARNS: Your Honor, I assume that that would require in any event a second trial in this case.

THE COURT: Yes. I don't know that it requires a second trial, but it might very well be so arranged.

MR. GOLDSTEIN: I don't understand. Why would it require a second trial?

THE COURT: The evidence is not the same, counselor.

MR. STEARNS: Necessarily medical evidence would be required.

THE COURT: In any event, I am going to tell you now that the question of the maintenance and cure will not be tried until the question of liability has been determined, and then you may produce whatever evidence you wish to support the claim for maintenance and cure.

MR. GOLDSTEIN: All right.

THE COURT: All right.

MR. GOLDSTEIN: Yes, sir.

THE COURT: But I will expect it to go right ahead if possible after the verdict on the liability is rendered.

MR. GOLDSTEIN: Yes, sir.

THE COURT: 10 o'clock tomorrow morning.

MR. GOLDSTEIN: Thank you, sir.

(An adjournment was taken.)

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

LEROY PORSS,

Plaintiff,

- against -

MARITIME OVERSEAS CORPORATION,

Defendant.

72 Civ 1600

New York, N. Y.
April 8, 1975

B e f o r e:

HON. RICHARD H. LEVET,

District Judge
and a Jury

Appearances:

FUCHSBERG & FUCHSBERG, Esqs.
Attorneys for Plaintiff
BY: HARVEY GOLDSTEIN, Esq.

HAIGHT, GARDNER, POOR & HAVENS, Esqs.
Attorneys for Defendant
BY: JOSEPH T. STEARNS, Esq.

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L E R O Y P O R S S, called as a witness in his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GOLDSTEIN:

Q Mr. Porss, may we know your age at this time?

THE COURT: Before you get into details, ascertain if he is the plaintiff.

MR. GOLDSTEIN: All right.

Q Mr. Porss, are you the plaintiff in this case?

A Yes, sir, I am.

Q You are suing the Maritime Overseas Corporation for injuries that you had on June 8, 1971; is that correct, sir?

A That is correct.

MR. STEARNS: I object to the form.

Q Mr. Porss, how old are you at this time?

A 46.

Q What is your address, sir?

A 216 Woolworth Avenue, Yonkers, New York.

Q Are you married, Mr. Porss?

THE COURT: That does not make any difference, counselor.

Q Mr. Porss, when and where were you born?

A December 27, 1928, in Estonia.

Q When did you first come to the United States?

A I entered the United States 1947, but I did not stay here permanently then.

THE COURT: You did not what?

THE WITNESS: I did not stay here permanently. I came as a seaman.

Q Mr. Porss, can you speak up a little more loudly, please. We are having some difficulty in hearing you, or at least I am.

What were you doing when you came here, that is, came to the United States in 1947?

A I came here as a seaman with a ship, 1947.

Q Where were you living at that time?

A I was a homeless seaman at that time.

Q A homeless seaman?

A Yes.

Q Can you tell the jury what you mean by that?

A I was a refugee.

THE COURT: I don't know that you need to be into all this, when he came the first time.

MR. GOLDSTEIN: Well, Judge, it does touch upon --

THE COURT: All right, put it in, counselor, if you think it is necessary.

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Q Mr. Porss, when had you left Estonia?

A I left 1944, when I went to Sweden. I stayed in '44 to '47 in Sweden, when I joined the Merchant Marine 1947. That was the end of staying in Sweden.

Q Then you came to the United States as a merchant seaman?

A Yes, sir, that's correct.

Q Did you then sail out of the United States?

A I did, for a while, until about, I don't know exactly, in 1948 I quit. And I applied for a permit, permanent, what you call it, permanent residence in this country, which at that time President Truman -- I don't know exactly how to say it --

THE COURT: Did you become a citizen of the United States? Is that what you are trying to tell us? Did you?

THE WITNESS: Yes, sir, I did.

THE COURT: When?

THE WITNESS: 1953, I believe.

THE COURT: All right.

Q Mr. Porss, were you at any time in the American Army?

A Yes, sir.

THE COURT: I don't know that that is important.

A For two years.

THE COURT: Sustained.

MR. GOLDSTEIN: That is important on the question of citizenship, Judge.

THE COURT: There is no question about citizenship here, counselor.

MR. GOLDSTEIN: All right.

MR. STEARNS: It would not make any difference anyway.

THE COURT: He says he became a citizen. Nobody is questioning that.

Q When you got out of the Army in 1953, can you tell us what you were doing or what did you do in the way of employment?

A I worked as a carpenter.

THE COURT: As a what?

THE WITNESS: As a carpenter.

THE COURT: On shipboard?

THE WITNESS: No, sir.

THE COURT: On shore?

THE WITNESS: On the shore, yes,sir.

Q How long did you work as a carpenter on shore?

A I started before I was -- in the Army, I believe started in 1949.

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Q And when did you --

A And I stopped as a carpenter in 1966 when I went back to the sea.

Q When you went back to the sea, you signed aboard some ships, is that right?

A Yes, sir.

Q Can you tell us some of the ships that you sailed on between 1966 and 1971, when you were aboard the Overseas Aleutian?

A Some, yes, sir. My first ship was named Beauregard.

Q The Beauregard?

A Beauregard.

Q All right.

A And Depot Victory, Linnfield Victory, Pecos, some others; I can't remember all of them.

Q What rating did you have? What did you sail as on those ships?

A As an AB.

Q And what is --

A Able-bodied seaman.

Q What is an AB? Tell us, if you will.

MR. STEARNS: He just answered the question.

A Able-bodied seaman.

Q What does an able-bodied seaman do aboard ships?

A An able-bodied seaman on the ship does the work on the deck, clearing the ship, you know, tying up the ship, you know, letting go, handling the lines, chipping, painting, watch work, lookouts, you know, at night. All depends what kind of ship it is. If it is a cargo ship, freighter they call them, we had to secure the booms. Tankers we don't have booms; we do cleaning tanks.

Q Is cleaning the tanks called butterworthing?

A Yes, sir, that is correct, that is what they call it.

Q On the tanker that would be part of the work that you as an AB did; is that correct, sir?

A That is their crew's work, sir, AB's, ordinary seamen.

Q Do you recall the day that you joined the Overseas Aleutian?

A It was Sunday, June 6, I believe, 1971.

Q Where was the ship at that time?

A It was at Eagle's Point, New Jersey.

THE COURT: Where?

THE WITNESS: Eagle's Point, New Jersey. I believe that is correct. I don't know exactly.

Q Was the ship docked at Eagle's Point, New Jersey,

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at that time?

A By the time I got there the ship wasn't in yet, but she came in later on that afternoon, and we joined the ship around 4 or 5 o'clock.

THE COURT: You joined July 6?

MR. GOLDSTEIN: June 6.

THE WITNESS: June 6.

THE COURT: June 6, you say?

THE WITNESS: June 6, 1971.

THE COURT: All right.

Q What did you join her as? What job did you have aboard her?

THE COURT: What was your rating?

THE WITNESS: Able-bodied seaman, yes, sir.

Q You were still an able-bodied seaman sailing aboard the Aleutian; is that correct?

A Yes, sir, that is correct.

Q Can you tell this Court and jury how much money an able-bodied seaman aboard the Overseas Aleutian would make?

THE COURT: No, not "would" make; "was" making before this accident, counselor, please.

Q How much were you making, Mr. Porss?

A You mean base pay?

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Q Base pay and overtime pay.

A I don't know exactly, but I think it was around $500 base pay, plus overtime.

Q Do you know how much --

THE COURT: That is for what period? $500 --

THE WITNESS: A month.

THE COURT: All right. Well, say so. We don't know.

Q Mr. Porss, do you know what overtime pay would be?

THE COURT: No, again, counselor, relate it to the time just before the accident. You understand that. I ought not to have to tell you.

Q How much overtime did you make, Mr. Porss, for the time that you were aboard the ship?

A As close as I can say, we came somewhere around $900 a month, you know, base pay, overtime.

THE COURT: About $400 for the overtime, you say?

THE WITNESS: Yes, sir. $900 is average.

THE COURT: $900 altogether?

THE WITNESS: Yes, sir. Average, I say.

Q You were not aboard the ship long enough for you to receive a month's pay, were you, Mr. Porss?

MR. STEARNS: I object to the form.

THE COURT: Sustained.

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Q How long were you aboard the ship?

A You mean before this date or when?

Q From the time you signed on until the time you had to leave the ship, how long was that?

MR. STEARNS: Objection to the form.

THE COURT: Sustained as to that. There is no proof as to when he left or as to time.

Q When did you leave the ship, Mr. Porss?

A As soon as --

THE COURT: No, not as soon as something else. Give us a date.

A I don't remember the date.

THE COURT: What month was it, please?

THE WITNESS: Same month. Approximately a week later.

THE COURT: June?

THE WITNESS: Yes, sir.

Q How many days was it after you joined the ship, approximately?

A Approximately six days, seven days, something like that.

THE COURT: Well, it would be about June 12, wouldn't it?

THE WITNESS: Yes, sir. That is close.

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THE COURT: All right, so be it.

Q Mr. Porss, did you join in the butterworthing operation aboard the ship, while you were aboard her?

A Yes, sir, I did.

Q Can you tell me who ordered you to do the butterworthing job or to help in it?

A The bosun did.

THE COURT: Who?

THE WITNESS: The bosun .

THE COURT: Bosun, all right.

Q Who is the bosun? Is he above you or is he equal to you or is he below you on the ship?

A He is above me. Everybody on the deck is above me.

Q So he is the head of the deck department?

A Yes, sir.

Q As a non-officer?

A Yes, sir, that's correct.

Q He is the last man below the level of officer on that ship, is that right?

A He is like a foreman.

Q When did he order you to join in the butterworthing system? When did he order you to do that?

A June 8, 1971.

THE COURT: June 8?

THE WITNESS: Yes, sir. 6 o'clock, 6 p.m.

Q Where was the ship at that time?

A The ship was at the sea.

Q Going to where from New Jersey?

A Going to a place called Pilottown, in Louisiana.

Q Pilottown, in Louisiana?

A Yes, sir.

Q She was then sailing south through the Atlantic Ocean, on the Atlantic Ocean; isn't that right, sir?

A That's correct.

Q Where did you meet for the first time, that is, you and the other men who were going to do the butterworthing job?

A We met at lunch table in the messroom, perhaps at 11:30, when the bosun asked me if I want to work overtime this evening.

Q What did you tell him?

A I told him yes, I am willing to work tonight.

Q Is that how you joined the butterworthing group, that is, the rest of the men who did the work with you?

A No. I can't speak for the rest of the men, how the bosun approached them, but when we started to work we met on the deck, which was around 6 o'clock.

Q What part of the deck did you meet on?

A It's aft of the wheelhouse on the port side, which means on the left.

Q Mr. Porss, the jury are not seamen, and when you talk about port, can you tell us exactly what you mean, sir? How does a seaman differentiate port and starboard?

A Facing the bow of the ship, or going forward, port is left side and starboard is right side.

Q And the bow of the ship is called forward and the --

A Aft.

Q -- back end of the ship is called the aft; is that correct?

A That is correct.

Q You mentioned that you met just aft, that is, behind the wheelhouse area.

A That means behind the wheelhouse toward the aft, back of the ship, not in front of the wheelhouse.

Q The wheelhouse is a structure like a building on top of the deck; is that the idea?

A That is right across the middle of the deck for -- I think officers' quarters were in there also.

THE COURT: You think what?

THE WITNESS: Officers' quarters were in that house, in that structure.

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MR. GOLDSTEIN: Mr. Stearns, do you have photos of the deck area?

MR. STEARNS: Your Honor, I think that question is totally improper to be made in front of the jury.

THE COURT: I don't know what the deck area has to do with this.

MR. GOLDSTEIN: May I show your Honor the defendant's answer to the plaintiff's interrogatories?

THE COURT: I don't want to see any interrogatories unless you are going to read interrogatories, and then they may be objected to by counsel.

MR. GOLDSTEIN: I am going to look at interrogatories.

THE COURT: Look at them.

MR. GOLDSTEIN: If counsel will produce them.

THE COURT: Nobody is stopping them.

You want to read them?

MR. GOLDSTEIN: No, sir. I want the photographs that plaintiff's attorney said he would produce for me in his answers to interrogatories.

MR. STEARNS: May I read the answer to interrogatories: "We have photographs of the deck area vicinity where Porss was working. You may see them or take your own photographs."

Did you take your own?

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MR. GOLDSTEIN: No. May I see them?

MR. STEARNS: You certainly may.

THE COURT: Let the record show that defense counsel is turning over to plaintiff's counsel how many photographs, approximately?

MR. STEARNS: Seven photographs.

THE COURT: Seven photographs.

MR. GOLDSTEIN: Thank you.

THE COURT: Do you want to offer them? Mark them for identification first.

MR. GOLDSTEIN: May I look at them first?

THE COURT: Of course.

MR. GOLDSTEIN: I haven't seen them yet.

May I ask that they be marked for identification?

THE COURT: Yes, seriatim, separately.

MR. STEARNS: Are they offered in evidence?

MR. GOLDSTEIN: I don't know yet.

THE CLERK: Judge, they are all in a book form. Do you want them marked separately or as a unit of one?

THE COURT: I would rather have them marked separately but keyed to one number, 1-A, something of that sort, the first photograph 1-A.

THE CLERK: Your Honor, they are marked 1, 1-A, 1-B, etc.

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THE COURT: All right.

(Plaintiff's Exhibit 1 and 1-A through 1-F marked for identification.)

Q Mr. Porss, after you met in that area --

THE COURT: Are you going to offer these, counselor?

MR. GOLDSTEIN: In a minute, Judge. These are the photographs of the area that they worked, not the area that they met.

THE COURT: All right. You will wait until later for the exhibits. Go ahead.

Q After you met just behind the midship house, that is, the wheelhouse, where did you go, that is, you and the other men?

A You mean at 6 o'clock?

Q Yes, at 6 o'clock that evening.

A Well, the bosun told us to --

THE COURT: No, where did you go? Not where he told you to go. Where did you go? That is clear. You understand the question, don't you?

THE WITNESS: I am trying to answer, your Honor.

THE COURT: Well, go ahead, go right ahead, don't hesitate.

THE WITNESS: We went to, I believe it was No. 6 or

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7 tank to continue the butterworthing where someone else had left it.

THE COURT: What hold was it in? What hold was it?

THE WITNESS: I don't exactly remember, six or seven, I believe.

Q Can you tell us exactly what a tank is on that ship?

A A tank is what holds cargo in, oil, grain.

Q What was the cargo in the hold at that time, that is, when you were going to be doing the butterworthing?

A The ship was empty at that time.

Q Was the ship going to pick up cargo? Is that what you were sailing down to Louisiana for?

A Yes, sir, that's correct.

Q Was it because of that that the butterworthing was necessary, that is, to clean out the tanks?

A I assume so, yes, sir.

Q Is that what you were told?

A That is what I was told, to clean the tanks.

Q That was what the bosun told you, is that correct?

A Yes, sir.

Q Was the bosun with you when you went over to the either 6 or 7 number tank? Was he there?

A At the beginning I believe he took us to that

place where we continued the butterworthing where someone had left off.

Q Was that on the main deck of the ship?

A Yes, sir. That is on the main deck.

Q That was not below the deck level?

A No, sir.

Q In some way?

A On top of the main deck.

THE COURT: Are you saying that the tanks were on the main deck? I am asking you the question. Are you saying that the tanks to which you were referring were on the main deck?

THE WITNESS: No, sir, the tanks are below the main deck.

THE COURT: That is what I assumed but that isn't what you said, apparently.

Q Mr. Porss --

THE COURT: You had better go back a little bit.

Q What was on the main deck?

A On the main deck are most of the valves, the pipes, water pipes, fill pipes.

THE COURT: He does not have to describe what is on the main deck. There isn't any claim about anything happening up there.

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Q. Mr. Porss, with respect to the tank, what part of the tank is on the main deck, if any?

A. Yes, there is the hatches or holds where you can -- there are two kinds -- one hold is for a machine to go down. One is bigger, where a man can climb down on a ladder.

Q. I see. So that the covers for the tanks are on the main deck?

A. Yes, sir.

Q. And the tanks go below that point down to the bottom of the ship; is that correct?

A. Yes, sir, the tanks are below the main deck.

Q. I show you these photographs --

THE COURT: One at a time, counselor.

Q. All right. I show you photograph 1 for identification Plaintiff's Exhibit 1 -- that is this one -- and ask you if that shows any covers for the tanks on the deck of the Aleutian Overseas?

A. Are you trying to tell me this is the same ship that I was on?

THE COURT: Are you asking me that? Yes, of course. You are the witness.

Q. Can you identify that as the ship from that photograph?

A. No, sir.

Q. Canyou identify any of the photographs, that is,

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seven photographs, as areas of the Aleutian Overseas or the Overseas Aleutian?

THE COURT: Do you want him to look through the whole works there?

MR. GOLDSTEIN: Yes, let him look through all seven.

A. It could be any tanker to me.

THE COURT: What is it, sir?

THE WITNESS: I don't see any name on it.

Q. It was the same as any other tanker, right?

MR. GOLDSTEIN: If your Honor please, the defendant has represented that these are photographs of the Overseas Aleutian --

THE COURT: I didn't hear any representation.

THE WITNESS: It looks similar to this ship, you know. It's a tanker ship.

THE COURT: All right.

THE WITNESS: I believe that is the name on it.

MR. STEARNS: He apparently doesn't accept the photographs because he does not see a name in the picture. Perhaps we could reassure him on that point.

THE COURT: You don't have to see a name on there to identify --

THE WITNESS: How can I identify? It's a ship, that is all, a tanker ship.

THE COURT: Go ahead.

MR. GOLDSTEIN: Is it agreed that these are photographs of the Overseas Aleutian?

MR. STEARNS: That is what the answer to the interrogatories indicates.

MR. GOLDSTEIN: That is exactly what I was going to try to tell the judge.

THE COURT: He says in effect yes.

MR. GOLDSTEIN: Yes, fine.

Q. Assuming, Mr. Porss, that it is in fact the Overseas Aleutian, can you tell us if this photograph --

THE COURT: Which one is it, please?

Q. -- marked 1 for identification --

A. In the first one, no. The second --

THE COURT: Wait. You hurry too fast. Wait until your lawyer asks you the question. Will you ask the question again?

Q. In photograph 1 for identification -- that is this photograph only -- do you see any covers for the tanks on the main deck of the ship in that photograph?

A. I see one here for the machine.

Q. That is for the machine. When you say a machine --

THE COURT: Don't tell him; ask him, please.

Q. When you say the machine, what machine are you talking about?

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A. The butterworthing machine goes through here.

MR. GOLDSTEIN: Very good. May we mark that photograph with an X in red pencil?

THE COURT: Give him a red pencil. I don't know whether X's are good to use.

MR. GOLDSTEIN: May we circle that cover?

THE COURT: Are you asking him to circle the butterworthing machine?

MR. GOLDSTEIN: No, Judge, that is the cover in which the butterworthing machine goes down.

THE COURT: All right, have him mark it in some indicated way so that you will know what it is.

How has it been marked?

MR. GOLDSTEIN: It didn't come out, there is a cellophane, cellulose.

MR. STEARNS: Your Honor, can I suggest, if he is going to offer that in evidence, that the plaintiff come in front of the jury and indicate with the pencil by just circling without marking it?

THE CLERK: Do you want to try red ink?

Q. Mr. Porss, can you now circle and see if you can have this come out?

(The witness complied.)

Q. Very good.

THE COURT: What is that you just marked?

THE WITNESS: This is the hole, a cover for the hole where the butterworthing machine goes down, with the hose attached to it.

Q And the tank is below that cover?

A Yes, sir.

Q How far down does the tank go, if you know?

A I believe approximately 40 feet.

THE COURT: 40 feet from where, the main deck?

THE WITNESS: From the main deck, down. All the way down it is about 40 feet, 35, 40 feet.

Q Mr. Porss, I show you the photograph marked 1-A for identification. Is there a similar cover shown in that photograph?

A Yes, sir.

Q Can you circle that? Is there a similar cover in 1-B for identification?

THE COURT: Just yes or no.

Q You have to say yes or no.

A Yes, sir.

Q Can you circle that?

A (The witness complied.)

Q Can you tell us what 1-C for identification represents?

A I believe that is the cover for the hole.

THE COURT: The cover for what, the hole?

THE WITNESS: For the hole I am talking about that the machine goes down through, on top of -- what is that, steel plate?

Q In other words, it is a --

MR. STEARNS: I object to the question as leading.

THE COURT: Don't lead him. Counsel objects.

Q And that is 1-C for identification that you have just explained to us?

A That could be it, yes.

Q That could be it, all right. What about 1-D for identification? What does that represent to you, sir?

A I think that is for hose to rest it on.

Q That is for the hose to rest on, did you say?

A Yes.

Q And that would be a butterworthing hose or any hose?

A Well, when you use it, you use it for butterworthing hose.

Q Now going over to 1-E for identification, do you see any additional parts of the butterworthing system, that is, any equipment or gear or any of the tank covers or anything else involved in the butterworthing system?

A This hose is for use -- that is the butterworthing hose here, right away.

Q That butterworthing hose is laying on the deck and on top of some pipes on the deck, is that correct, sir?

A Yes.

Q Now I ask you to look at photograph 1-F for identification and tell us if you will what that represents to you.

A I see the hose here again, butterworthing hose. I see the line that they call the anchor line attached to the hose at the end of the hose where the butterworth machine would be attached to.

Q I see. Photographs 1-E and 1-F for identification, the same photographs from a different angle? Do they show the same equipment, the same pipes, the same hoses, the same lines?

A Yes.

Q I am asking you.

A It could be.

THE COURT: He made a motion, but I didn't hear him make any statement.

Q Does 1-E and 1-F show the same equipment and gear and lines and hose that are used in a butterworthing operation? Are they both the same picture shown from a

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different angle?

A They look the same to me, yes, sir.

MR. GOLDSTEIN: If your Honor please, I should like the jury to s these photographs.

THE COURT: Let me see them first, will you?

MR. GOLDSTEIN: I will (handing to the Court).

THE COURT: Any objection, counselor?

MR. STEARNS: No, sir.

THE COURT: It is admitted in evidence now. Let it be marked in evidence, counselor. We have to go through that stage.

(Plaintiff's Exhibits 1, and 1-A through 1-F received in evidence.)

THE COURT: You may show it to the jury.

MR. GOLDSTEIN: I will show it to the jury.

THE COURT: Pass it to the No. 1 juror. Pass it along.

(Handed to the Jury)

MR. GOLDSTEIN: If your Honor please, may I respectfully request that if the jurors have any question concerning these photographs that they be allowed to ask?

THE COURT: Yes. They will write them out, however, on paper if they have any.

MR. GOLDSTEIN: If there is anything that is

unclear to them from the testimony.

THE COURT: Well, there may be. I would not say there isn't. That is up to them, counselor.

You may continue with the witness.

MR. GOLDSTEIN : Thank you, sir.

Q Mr. Porss, you know what a watch is, don't you, sir?

A Watch on the ship, yes, sir.

Q What is a watch?

A Watch is three men on a watch means they divide it in three, four hours each. Three men on a watch, that means it could be from 12 to 4, 4 to 8, 8 to 12.

Q When the ship is at sea, do you stand two 4-hour watches; is that the idea?

A During 24 hours, yes, sir, that's correct.

Q So that you would stand a watch for four hours, that means you would be on duty for four hours; is that correct?

A Yes, sir, that is correct.

Q Doing whatever you were ordered to do?

A Yes, sir.

Q So you would be on duty for four hours, and then you would be eight hours off, and then you would go on duty for another four hours and then eight hours off again; is that

the idea?

A Yes, sir.

Q Did you have a watch during the time that you were aboard the Overseas Aleutian?

A Did I have a watch?

Q Yes, did you have a watch?

A Yes, sir, I had a watch from 12 to 4.

Q So that means you would work from noontime until 4 in the afternoon, and from midnight until 4 in the morning; is that correct?

A Yes, sir, that is correct.

Q Is that every day, seven days a week?

A That is, unless they break sea watches. At sea they can't do that, but when a ship gets to port they can break the sea watches.

Q But during the time that you were on the ship, the ship was always at sea; is that correct?

A Yes, sir.

Q When you were asked to meet at 6 o'clock that evening, you had gotten off duty at 4 o'clock that evening?

A That is correct, yes, sir.

Q You had worked until 4 in the afternoon?

A Yes, sir.

Q And you met two hours later, is that correct?

A Yes, sir.

Q What did you do during that two-hour period?

A Well, from 4 to 5 I have time to clean up, take a shower if I wished, and 5 to 6 we have meal hour.

Q So that you had your dinner, you had your supper from 5 to 6, and then you met the other men on the deck aft of the wheelhouse, is that correct?

A Aft to the wheelhouse on the deck, yes.

Q Where did you go to begin the work? Did you have to go aft or did you go forward? That is, did you go more to the back of the ship or did you go more to the front of the ship from where you met with the other men?

THE COURT: The simple question is: Where did you go?

A We met on the aft of the deck.

Q Where did you go to, to do the work?

A Oh, we were told to startat No. 6 or 7 on the port side, butterworthing.

Q Was that more to the back of the ship than where you met?

A That isback of the house, midship house.

Q Can you tell us, No. 1, how many men are required to do the butterworthing job?

MR. STEARNS: I object.

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THE COURT: Sustained.

Q Will you tell this Court and jury the experience that you had at that time doing the butterworthing work?

MR. STEARNS: At that time? I object to the form.

THE COURT: Are you objecting, counselor?

MR. STEARNS: Yes, sir.

THE COURT: As to the form?

MR. STEARNS: As to relevance and competence and everything else that I can think of.

THE COURT: You might elicit how many times or how long he had done butterworthing.

MR. GOLDSTEIN: That is what I am trying to do, Judge.

THE COURT: You did not ask it that way, counselor. That is the unfortunate part of it. Sustained as to form at least.

Q Up to that time, Mr. Porss, how many times had you done butterworthing work?

A I sailed once before on a tanker.

THE COURT: Read that question.

(Question read)

A I sailed on a tanker in 1948 --

THE COURT: No, that isn't the question.

A -- and I don't remember exactly how many times I

have done it.

THE COURT: All right, he does not remember.

A So I cannot answer.

THE COURT: All right. Nobody criticizes your answer. "I can't remember how many times I have done it."

Q Did you do it at all?

A Yes, sir.

Q Was it once or more than once?

A More. I was six months on a tanker, 1947,'48.

Q Did they do butterworthing at that time?

A It was a different system, but it was called butterworthing.

Q Did you do that work for six months on that ship? Did you do the butterworthing work?

A Yes, sir. I just told you.

Q For six months on that ship?

THE COURT: What was the difference between that ship and the other ship as to butterworthing? What was the difference?

THE WITNESS: Well, now everything has modified.

THE COURT: How is it different on the other ship where you said you served?

THE WITNESS: Oh, we only used a hose but now they have a pressure machine, where you hold a hose and the pressure

THE COURT: What hour?

MR. GOLDSTEIN: Yes.

Q What hour?

A 6 p.m.

Q How many men were supposed to be with you, if you know?

MR. STEARNS: Objection.

THE COURT: Sustained.

Q Who was with you at the time you started that work?

A Frank, the deck maintenance man, and Schmidt, the other AB.

Q And yourself?

A And myself.

Q And was the --

THE COURT: You asked who was with h m.

Q Was the bosun there?

MR. STEARNS: Objection on the form of the question.

A The bosun was on the deck.

THE COURT: Where was the bosun at that time?

THE WITNESS: He was with us on the deck.

Q Did you start the butterworthing system going?

A He told us to start around --

THE COURT: The question is, did you start the

is different now. They do it by machine now.

Q Had you used the butterworthing equipment at any time prior to the time that you used it in June of 1971 aboard the Overseas Aleutian?

A Have I done the butterworthing?

Q Yes. Had you done the butterworthing operation with the kind of machinery?

THE COURT: I don't know what that kind of machinery means, counselor.

Q The kind of machinery that was aboard and used on the Overseas Aleutian.

THE COURT: Reframe your question so it will be in one piece.

MR. GOLDSTEIN: All right.

Q Did you do any butterworthing before June 1971 with the same kind of equipment and gear that was aboard the Overseas Aleutian for that purpose?

A No, sir, I have not.

Q Did anybody ask you whether or not you had ever used that kind of machinery before?

MR. STEARNS: Objection. It is irrelevant.

THE COURT: Sustained.

MR. GOLDSTEIN: It is irrelevant? May we approach the side bar?

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THE COURT: No. I am not going to have conferences at the side bar about every ruling on evidence.

Q Did anybody offer you any instruction on how to do the butterworthing work --

MR. STEARNS: Objection.

Q -- aboard the Overseas Aleutian before you were asked to do it?

MR. STEARNS: Objection.

THE COURT: I will allow that. Overruled. Do you understand the question?

THE WITNESS: I can answer that?

THE COURT: Go ahead, answer it.

A No, nobody asked me if I know.

THE COURT: Did anybody instruct you? the question is. Did anybody instruct you, tell you how to do it?

THE WITNESS: No. sir, nobody told me nothing, excepting to work and that's it.

Q Again I ask you, did anybody ask you if you had ever had any prior experience to the butterworthing operation with the same type of equipment and gear that was used on the Overseas Aleutian at that time?

A No, sir.

Q Mr. Porss, when did you actually start to work that night?

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butterworthing system going? Do you understand the question?

A 6 o'clock, a little after, we started the butterworthing.

Q Is that when you started the system?

A Yes, sir.

Q Can you tell us, No. 1, what kind of equipment is used in the butterworthing system?

A No, not generally. This time. There.

Q Yes. What kind of equipment was used at that time, that is, on June 8, 1971, aboard the Overseas Aleutian?

THE COURT: In other words, what was the equipment there then? Do you understand the question?

THE WITNESS: Yes, sir. Can I answer it?

THE COURT: Of course. That is why we ask it.

A There is rubber hose attached to the water pipe, it's about 40 feet long, the rubber hose, and the butterworthing machine is attached to the end of the rubber hose. And also a line is attached.

THE COURT: How is the line attached?

THE WITNESS: Attached close to the end of the line.

THE COURT: I don't understand.

THE WITNESS: Close to the machine.

THE COURT: It isn't clear. Where was the line attached? To what?

JB

THE WITNESS: To the hose.

THE COURT: Which, the end where the nozzle is?

THE WITNESS: The machine I am talking about, the machine. There is no nozzle. There is a machine. They call it a butterworthing machine.

THE COURT: There was a rope attached to that?

THE WITNESS: Yes, sir.

Q Mr. Porss, showing you Exhibit 1-E and 1-F, does that photograph show the kind of rope and the hose that was used in the Overseas Aleutian at that time?

A This is a similar hose. The line is attached at the end of the hose, close to the machine, right? And the machine is attached to the end of that nozzle there.

Q Is the machine --

A This could be -- I am talking about generally. This could be just a different line. But approximately, I am talking about.

THE COURT: Ask the question over again, counsel.

Q Mr. Porss, is this approximately the same type of line that was used by you and the other men aboard the Overseas Aleutian on June 8, 1971?

THE COURT: Now, which exhibit are you talking about?

Q E and F, 1-E and 1-F.

A That is approximately the same.

Q Do either of those photographs show the machine itself?

A No. No, sir, there is no machine.

Q That just shows the hose and the nozzle and the line that is attached to the nozzle area; is that basically correct?

A That is the general idea. Now, here at the end of the hose the machine will be attached and lowered in the tanks.

Q Into the tank itself.

A Yes. I don't see the machine on the picture there.

MR. GOLDSTEIN: If your Honor please, may we now show the jury just E and F again.

THE COURT: Yes, if you want to.

MR. GOLDSTEIN: They saw it, but it is now further identified.

(Handed to the jury)

THE COURT: You may go on.

MR. GOLDSTEIN: Thank you, sir.

Q Mr. Porss, you say that there was a machine attached to the nozzle of the hose.

THE COURT: Yes. He said that. You don't have to ask him twice.

MR. GOLDSTEIN: I ask the defendants to produce the

photographs of the equipment as set forth in its answers to Interrogatory No. 15.

MR. STEARNS: May I see the answer?

MR. GOLDSTEIN: Yes.

MR. STEARNS: They are in evidence.

MR. GOLDSTEIN: Are those the photographs?

MR. STEARNS: Yes, sir.

MR. GOLDSTEIN: All right.

Q Mr. Porss, I take it that first the machine and the hose were lowered down into the tank. Is that correct, sir?

A Yes, sir, that's right.

Q Can you tell us the routine, the system that was used in order to clean that tank?

A Well, let's say the machine is attached to the hose already, and the line is attached close to the machine, to the hose, so you can use it by pulling and stopping it, the machine. Then, when we start, we lower it in stages, about 6 or 7 feet at a time, it's up to the bosun, whatever he wants. So we rinse the bottom of the tank.

THE COURT: You rest?

THE WITNESS: Pardon?

THE COURT: Will you repeat what you said.

Read the answer, please?

(Answer read)

THE COURT: Next question.

Q What happens with the machine?

A Let's say we lower at first stage, about 7, 10 feet in the tank, and we turn on the water. And the water pressure makes the -- the water pressure from the pipes will make the machine spread the water in the tank, you know, and clean it all around.

Q What is there that lets the water out of the machine?

A This hose in the machine that will -- I believe it swirls.

Q What is the machine shaped like?

A It's about 16 by 18 inch, or something like that.

Q What is it shaped like? What shape does it have? Is it rectangle, is it circular, is it oval? What is it, if you know?

A I don't exactly know how to explain this. It is 16, 18 inches, 20 inches.

THE COURT: He is having a little trouble with his English.

MR. GOLDSTEIN: Just a bit, sir.

THE COURT: I don't know how big a bit.

MR. GOLDSTEIN: We can only hope for the best.

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THE COURT: I join in your hope.

Q Mr. Porss, can you tell us another object that the machine is shaped like?

A Let's say like a football or something like that.

Q Are there holes in that football-like object?

A There are holes in it, yes, sir.

Q And the water pours out of the holes, is that right?

A Yes, sir, that's right.

Q Under pressure. And that sprays the tank, is that correct?

A Yes, sir, that's correct.

Q Very good.

THE COURT: Where does it spray it in the tank? On the sides of the tank?

THE WITNESS: On the sides of the tank, yes.

Q You say that the machine is lowered down 6 or 7 feet?

THE COURT: Yes. He has told you all about that. Why do we have to go over it twice?

MR. GOLDSTEIN: For purposes of time, Judge.

Q How long does the machine stay on one level?

THE COURT: I don't know how he can answer that one.

A Yes. This is up to the bosun.

Q Well, approximately.

A Ten, fifteen minutes.

Q How long did it stay on a level when you were working there?

A Ten, fifteen minutes, I would say.

Q Very good. And then it is lowered down to the next level?

A Yes, sir.

Q And it stays another ten, fifteen minutes?

A Yes, sir.

Q And then continuously until it reaches just about the bottom of the tank, is that right?

A That's correct, yes.

Q Does there come a time where you have to raise the machine from the tank?

A Yes, sir.

MR. STEARNS: Your Honor, at this point can I ask that counsel be directed not to ask leading questions, because now we are at the point.

THE COURT: Yes. Stop your leading questions. This may be a critical area.

MR. GOLDSTEIN: Yes, this is, I believe, Judge.

THE COURT: Please remember it.

wc 42 Porss - direct

Q Mr. Porss, will you please tell the Court and jury the procedure to raise the hose and machine from the tank out to the upper deck again, out to the outside deck?

MR. STEARNS: Objection.

THE COURT: What is the objection now?

MR. STEARNS: What procedure they were using, not what procedure is. What were they doing?

THE COURT: Of course. It must be what was being used. Reframe your question, counselor. The objection is sustained.

MR. GOLDSTEIN: Judge, I think it was obvious what I was talking about.

THE COURT: No, it was not obvious.

At any rate, you ask it again, reframe your question.

Q Mr. Porss, can you tell us the procedure that you followed and the other men followed in raising the hose and machine out of the tank that you had been cleaning?

A Yes, sir. I can answer that.

Q Please do.

A Let's say the hose and machine is all the way down in the tank. Then we use three men, one in the middle, one on the line, one on the hose. And let's say we count 1, 2, 3 and pull, about 5 feet or 3.

wc 43 Porss - direct

Q Who pulls?

A Three of us, we pull. I am talking about us, what we did that night. And the man on the line, he is called the anchor man. Every time we pull, he has to step on the line and stop everything.

Q For what purpose? Why does he have to step on the line and stop everything?

MR. STEARNS: Your Honor, can I ask what was done and what was done at the time this man claims he had an accident?

THE COURT: Yes. Sustained.

MR. GOLDSTEIN: If your Honor please, we are leading up to that point now.

THE COURT: Yes, you are leading, but that does not get to the point.

Next question, please.

Q Mr. Porss, how many men were working with you when you were raising the hose and machine and line out of the tank?

A Two men.

Q Can you tell me who they were, sir?

A Deck man is called Frank and my watch partner is Schmidt.

THE COURT: Frank somebody?

THE WITNESS: I don't know his last name.

THE COURT: And Schmidt? Who was Frank? What was his last name, if you know?

THE WITNESS: I don't know his last name. He was a deck maintenance man.

THE COURT: All right. These two were working with you, is that correct?

THE WITNESS: Yes, sir.

Q At that time, then, there were three men handling the hose, the line, and the machine; is that correct?

A That's right. Raising it up.

Q No. 1, what did the entire hose and machine weigh at the time that you started picking it up?

THE COURT: If he knows.

Q If you know.

A Well --

THE COURT: Do you know?

THE WITNESS: My inquest is right there, I don't know, but they ask me approximately and I told him.

THE COURT: Wait. I don't know what he is answering, counselor. He is telling some peroration.

Q Mr. Porss, if you don't know exactly --

A I don't know, absolutely, exactly.

Q Can you give us an estimate?

A It is hundreds of pounds.

Q Can you give us an estimate?

A Three to five hundred pounds, I say.

Q All right.

THE COURT: That is for what, the machine?

THE WITNESS: The hose .

THE COURT: The hose.

THE WITNESS: And the water.

THE COURT: The hose and the machine?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q Was the machine attached to the hose when you started picking it up?

A Yes.

Q Was the line attached to the hose near the nozzle when you started picking it up?

A Yes, sir, that's right.

Q What part of the equipment did you have hold of?

A I was on the hose.

THE COURT: You were on which, the hose?

THE WITNESS: On the hose.

Q What part of the equipment did Mr. Schmidt have?

A Mr. Schmidt was in the middle there. He grabs the hose and the line, and Frank was on the line.

THE COURT: Schmidt was on the hose and the line?

THE WITNESS: Yes, sir.

THE COURT: Is that what you said?

THE WITNESS: He is in the middle, yes.

THE COURT: Where was the deck man?

THE WITNESS: He was on the line.

THE COURT: All right.

Q Was there anybody behind you?

A Nobody behind me.

Q Was there a fourth man there, doing any work while --

MR. STEARNS: Object as to form.

THE COURT: Sustained.

Q Was there anybody, besides the three of you, doing any work at the time that you were raising the machine, hose and line out of the tank?

A No, sir.

Q If you will, or if you can, will you please show the Court and jury the routine that was followed by the center man, that is, the middle man, in raising the hose and line out of the tank?

THE COURT: You mean by some demonstration?

MR. GOLDSTEIN: Yes.

THE COURT: No. Let him tell about it. The

demonstration is not recorded; there is no recording method, no photography.

Q Can you tell us how the middle man would work in helping --

THE COURT: "Would," now, again, or "did"?

Q -- did work in helping to raise the line, hose and machine from the tank.

A Like I said before, he is in the middle and he grabs the hose and the line and pull, we all pull together.

Q When you say he pulls, what do you mean? In terms of --

A Raising up the machine.

Q Does he do this in one motion or in two motions and what does he do?

A One motion.

Q As he pulls --

THE COURT: As he pulls?

Q As he pulls --

THE COURT: No, as he pulled. It is past tense.

Q As he pulled, the hose and the line came up out of the tank, is that correct?

MR. STEARNS: Objection as to form.

THE COURT: Yes, sustained. It is leading again.

Q What happened to --

wc 43 Porss - direct

THE COURT: You don't seem to know what a leading question is.

MR. GOLDSTEIN: I know very well, Judge.

THE COURT: Then refrain from using it.

MR. GOLDSTEIN: What I am trying to do, Judge, with all due respect, is get something that the jury will understand. That is the purpose of being here.

THE COURT: Yes, so are we, counselor, and the defendant has the right to object to leading questions, so refrain. That is simple.

Q Mr. Porss, when the middle man pulled, that night of June 8, 1971, what would happen to the line and to the hose?

THE COURT: What "did" happen, not what "would" happen. I have told you that three or four times.

MR. GOLDSTEIN: Judge, I phrased the question "when he pulled."

THE COURT: That does not make any difference as to the last part of the question.

Q All right, Mr. Porss. What happened when he pulled it?

A When we pulled the line and hose, like the hose I would throw it behind me, on the deck.

MR. STEARNS: I object to the answer as non-

responsive.

THE COURT: Read the answer, please.

(Answer read)

THE COURT: You move to strike?

MR. STEARNS: Yes.

THE COURT: Sustained. Strike it out.

Q Mr. Porss, the question was: What would happen to the line --

THE COURT: No, that was not the question. I corrected that. I am trying to help you, and I don't get much assistance.

Q What happened to the line and to the hose when it was pulled that night? Just tell us about the line and the hose. What happened to it?

A I don't understand it right now. Are you trying to --

THE COURT: You don't understand his question?

THE WITNESS: Are you trying to --

THE COURT: Do you understand the question?

THE WITNESS: I understand it, but I don't know --

THE COURT: You don't know what happened?

THE WITNESS: I don't know what you -- you want me to tell what happened, how the accident happened? I can explain it that way.

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Q I want you to tell how the operation happened.

THE COURT: Strike all this colloquy from the witness out. Remember, ask your questions or else have the reporter read it.

Q Mr. Porss, when the middle man, that is, the man in the center, started pulling up the hose and the line, what happened to that hose and line?

A When we started?

Q Yes, when you started.

A I don't know, "when we started," does that mean when they started to work?

Q When they started the raising of it.

A The first pull?

Q Yes, the first pull. What happened?

A Like I said before, we pulled it up, I was on the hose, and the hose I throw it behind me. And the line man, every time he pull he has to step on it and stop the machine falling down again.

MR. STEARNS: Your Honor, I object to the answer.

THE COURT: Well, move to strike it, counselor.

MR. STEARNS: Move to strike, yes.

THE COURT: You will have to simplify it or else get an interpreter. I don't know what to do. It is your problem.

Q Mr. Porss, let us take it this way.

THE COURT: Take it slowly, counselor.

MR. GOLDSTEIN: I am trying, Judge.

THE COURT: Yes, I know you are trying to. Just continue and refrain from leading questions, and ask what happened and not what would happen, then we will get along. In fact, it is almost time, it is time for a recess. We will have a short recess.

(Recess)

(In the robing room)

THE COURT: After hearing the question and answer read back, I am going to deny the motion to strike.

(In open court, jury present)

THE COURT: You may go on, Mr. Goldstein.

MR. GOLDSTEIN: If your Honor please, may we have the last question and answer read?

THE COURT: Yes.

(Question and answer read)

Q What would happen --

THE COURT: Not what "would" happen. Do I have to constantly remind you of that?

Q What did happen --

MR. GOLDSTEIN: Sorry, sir.

Q What did happen when the man in the middle pulled

up the line and the hose?

A Well, the line starts to come up.

Q What about the hose?

A The line and the hose, that is what I am talking of. The machine starts to raise, right?

Q Is that when both you and the line man take hold of the hose and line that is coming up?

MR. STEARNS: Objection as to form.

THE COURT: You are leading him again.

Q What do you do when the hose and the line start to come up? What did you and the line man do?

THE COURT: Take one at a time, counselor.

Q What did you do when the hose started to come up?

A Every time we pull, we all pull together, bend down and pull up.

Q What did you --

A And the man on the line the same thing.

Q What did you do?

A What did I do?

THE COURT: Let him finish his answer, counselor.

MR. GOLDSTEIN: I am trying to get back to the hose, Judge.

Q What did you do with the hose?

THE COURT: He was back to the hose and you were

not.

A I was on the hose.

Q What did you do with the hose when you pulled it?

A Like I said before, I threw it back on the deck, back behind me.

Q What did the line man do with the line when he pulled it?

A The line man has to pull, and as soon as we finish the pull, he was to step on it, to stop the machine.

THE COURT: Read the answer, please.

(Answer read)

THE COURT: Step on what?

THE WITNESS: Step on the line to stop the machine and the hose falling back in the tank again.

THE COURT: To stop or start the machine?

THE WITNESS: Stop.

THE COURT: All right.

Q Is this a continuing movement of the three of you, that is, the pull, the hose and line coming up, and both drop it onto the deck, and then you go at it again?

A Yes, sir, that's correct.

Q And it is a continual movement?

THE COURT: Can you stop leading him, counselor?

Q Is it a continuous movement?

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THE COURT: "Was" it.

Q Was it a continuous movement?

A Yes, sir, that was.

Q Did there come a time when something unusual happened during the course of that raising of the line, the hose, and the machine?

A Yes, sir.

Q Tell us what happened.

A After about the third pull --

MR. STEARNS: Your Honor, can we restrict this to what happened? He is talking about --

THE COURT: What happened? Sustained as to form. Change your question.

Q What unusual thing happened?

THE COURT: No, leave out "unusual." What happened? Whether it is unusual or not is perhaps for somebody else to decide.

Q What happened to you at that time, Mr. Porss?

A That night --

THE COURT: That night? What happened?

THE WITNESS: Yes, sir.

THE COURT: What happened there where you were working?

THE WITNESS: After the third pull, suddenly I

caught all the weight, and the machine fell back into the tank again and pulled me down on the deck.

Q What had happened to cause that?

A Well, when I fell, I got all the weight on my -- most on my right side. That's when I felt, you know, terrible pains in my back, and I fell on the deck then.

THE COURT: Will the reporter read the answer, please.

(Answer read)

Q What had caused you to take all the weight of the hose and the machine?

A Because the line man, they call it an anchor man, he did not stop it.

THE COURT: Who was the anchor man you are mentioning?

THE WITNESS: Frank was on the line.

THE COURT: What did you say he did or didn't do?

THE WITNESS: He did not stop the machine falling down.

THE COURT: That was Schmidt, you said?

THE WITNESS: Frank.

Q Frank.

THE COURT: What is Frank's name?

THE WITNESS: I don't know his last name.

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THE COURT: Frank whatever it was, you say he did not hold the line?

THE WITNESS: He did not step on it to stop the machine falling back into the tank again.

THE COURT: How would he step on it? How did he step on it?

THE WITNESS: The usual procedure, when we pull on the line, every time we reach to the point of the pull-up, then he has to step right away on the line and stop the machine from falling down again.

THE COURT: All right. Go ahead.

Q Had anything happened to cause the machine to start to fall back into the tank again?

MR. STEARNS: I object to the form.

THE COURT: Yes, sustained. I don't know what that means.

Q Had anything happened before Frank failed to step on the line?

THE COURT: Anything happen?

MR. GOLDSTEIN: Yes.

THE COURT: Well, lots of things may have happened, but --

Q Anything unusual happen?

THE COURT: Well, that is out.

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Q Can you tell us what George Schmidt had done prior to the time, immediately prior to the time, that Frank did not step on the line?

MR. STEARNS: I object to the form.

THE COURT: What is wrong with the form, counsel?

MR. STEARNS: Your Honor, he is suggesting that Mr. Schmidt did something and did something improper.

MR. GOLDSTEIN: I did not suggest anything.

MR. STEARNS: Ask him, then, what part of the procedure the men were in, what the relative position of their bodies was, what each was doing.

THE COURT: All right. Sustained as to form, counsel.

Q Mr. Porss, just prior to the time that you fell to the deck, the three of you were in this operation; is that true?

A Yes, sir.

Q What was George Schmidt doing as part of that operation?

A He was in the middle.

THE COURT: He was what?

THE WITNESS: He was in the middle.

THE COURT: In the middle.

THE WITNESS: Frank was on the left and --

THE COURT: What was he doing in the middle?

THE WITNESS: He, like I said before, he is the man who grabs the hose and the line in the middle. And then we all bend over, like this, you know (indicating) and pull.

Q Did George Schmidt do it just that way immediately before you were hurt?

A Yes, sir.

Q Did he do his end, that is, did he pull up the hose and the line?

A Yes, sir.

Q Then what happened after he pulled up the hose and the line?

A Which pull do you mean?

THE COURT: He does not understand your question, counselor.

Q What happened after Schmidt in the center pulled up the hose and the line? Tell us what happened.

A He let go. He let go.

Q What happened to the hose and the line when he let go?

A That's right.

Q What happened to it?

A On whom?

Q To the hose and to the line when George Schmidt

let go.

A I said before the whole machine and the hose fell back in the tank again.

Q Then what did Frank do?

A He did nothing. He left go everything.

Q What happened with you?

A That is, when they both let go, suddenly I caught all the weight, and that is when it pulled me down on the deck. It was about 6 feet or something like that, on the deck, pulled me down. That is when something like pressure, heavy weight, and something like stretch on my back and I fell down on the deck.

THE COURT: Something pressed against your back, you say?

MR. GOLDSTEIN: Something stretched.

THE COURT: I will ask him. I don't want you to interpret what he says.

MR. GOLDSTEIN: May we have the court reporter tell us what he said.

THE COURT: All right, I will do that, but I was asking a question. He said something pressed him.

Is that what you said?

THE WITNESS: Suddenly I caught all the weight. I am a right-handed man. That is how I held that hose.

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THE COURT: Yes?

THE WITNESS: I was standing up like that. Suddenly I got all the weight and it went --

THE COURT: That is what you mean by pressed; right?

THE WITNESS: Yes, the weight.

THE COURT: All right.

THE WITNESS: Weight pressed.

THE COURT: Next question.

Q What happened to you after that? What did you do after you landed on the deck?

A I was lying down there for a couple of minutes or so.

Q Then what happened?

A After about a couple of minutes, Schmidt said, "All right, let's try it again."

MR. STEARNS: I object to that as hearsay, your Honor; move it be stricken, what Schmidt said.

THE COURT: Read the answer, please.

(Answer read)

THE COURT: Oh, I will leave it in.

Q Then what did you do?

A We finished that --

THE COURT: No. What did you do, not what you and

the other men did.

A Well, I started to work with them again.

THE COURT: You started to work with the machine too? Did they use the machine? Did they use the machine?

THE WITNESS: Well, the same machine, we started all over again, with the same procedure.

THE COURT: All right, started all over again.

Q At that point did you pick up and raise the hose and the line of the machine?

THE COURT: You want to lead every question or every other question, counselor?

MR. GOLDSTEIN: Judge, they all happened at the same time. You can't do one without the other.

THE COURT: I know, but that does not mean that you lead him each time. Phrase your question suitably.

Q What did you do at that point, Mr. Porss, you and Frank and George Schmidt?

A After that, we raised up the hose and the machine, and then we went to the next tank.

THE COURT: Did you finish that first tank?

THE WITNESS: Yes, sir. We finished them, about three or four tanks, before that accident, I am talking about.

THE COURT: All right, three or four times.

THE WITNESS: But if you are talking about the tank

where I was hurt at, after that we went -- we finished that, and we went to the next one. So it happened --

THE COURT: Have you finished your answer now?

Q Did you continue to work that night?

A Yes, sir.

Q All right.

A I continued.

Q Did you complete the time that you were supposed to complete?

A Yes, sir. We were knocked off early.

THE COURT: What time did you stop work?

THE WITNESS: About 10:20 we were knocked off.

Q What happened to you the next morning? What did you do the next morning?

A The next morning when I was called at 11:30, 25, something like that, I couldn't get up at all, I couldn't get more than raise my head up. In other words, I was stiff.

Q What did you do?

A And I asked my partner, Schmidt, to call the chief mate.

THE COURT: Schmidt was your partner?

THE WITNESS: Yes, sir. We were in the same room.

THE COURT: All right. Go ahead.

Q He was your roommate?

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A So he says.

Q Did he call the chief mate?

A I don't know if he called the chief mate, but he probably told the man on the watch. I don't know.

THE COURT: He doesn't know whether he called him.

Q Did anybody come down to the room?

A Yes, sir. A little later.

Q Who came down?

A The chief mate came down.

Q Did you tell the chief mate what was wrong with you?

A He brought me some tablets for pain, I believe they call. Tablets for pain.

Q Yes?

A And what's the name, that stuff you rub on.

Q An ointment?

A No. It's liquid.

Q It is a liquid.

A Liquid.

Q All right.

A And he asked me to apply it on my back, but I couldn't move at all, so he did it. And later on, I don't remember exactly who rubbed it on later.

Q Did you stay in your bed that day?

A Yes, sir. I couldn't get up at all for about two or three days.

Q Did anybody ask you what had happened to cause that pain?

MR. STEARNS: Objection.

THE COURT: Sustained.

Q Did anybody ask you what had happened to you?

MR. STEARNS: Objection.

A Yes.

THE COURT: Overruled.

Q Who was that who asked you?

A Chief mate came over with a sheet of paper and he asked me to write down what happened to me.

Q Is the chief mate the medical officer on board the ship?

THE COURT: Or was he?

Q Was he?

THE COURT: If you know.

A I don't know. Perhaps he is in charge for medicine.

THE COURT: Was he, sir? Was he the medical officer, do you know?

THE WITNESS: Usually they are. I don't know if he was.

THE COURT: I did not ask you that at all.

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THE WITNESS: I don't know.

Q Is he the one --

THE COURT: All right, he does not know.

Q Is he the one who gave you the pills and liquid for rubbing on?

A Yes, sir.

Q Did you return to any work aboard that ship at any time?

A After that accident?

Q Yes, after the accident.

A No, sir.

Q Did the ship ultimately reach New Orleans?

A No, no, sir, not New Orleans.

Q Where did it reach?

A The ship went to Pilottown, Lousiana.

THE COURT: Where?

THE WITNESS: Pilottown, Louisiana.

THE COURT: Pilottown, Louisiana?

THE WITNESS: Yes, sir.

Q Where was that, in the mouth of the Mississippi River, Pilottown?

A Yes, in the general area, yes.

Q Did you get off the ship at that time?

A As soon as that --

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THE COURT: He said, did you get off the ship at that time? Yes or no. You ought to be able to answer it. Did you get off the ship at that time?

THE WITNESS: Yes, sir.

THE COURT: What date was that?

Q Do you remember the date?

THE COURT: If you know.

A Around 12th, I think.

Q Around the 12th.

A 11th or 12th.

THE COURT: 12th of what month?

THE WITNESS: June.

THE COURT: All right.

THE WITNESS: 1971.

Q Did you get a slip from the officer?

A Yes, sir, I got a master certificate.

Q What is a master certificate?

A It is when somebody gets hurt on the ship, you get it from the chief mate or a captain, whoever signs it, and you go with that to the hospital or your doctor, whatever.

Q What hospital did you go to?

A I was taken to New Orleans Public Health Service Hospital.

Q And that is the Marine Hospital in New Orleans?

A Yes.

Q It is called the Marine Hospital in New Orleans?

A They used to call it. It is a different name.

Q That is where seamen get treated?

A Yes, sir.

Q By the United States Government, is that so?

THE COURT: They are treated there free.

Q You are treated by the United States Government doctors, isn't that so?

A That's right.

Q How long did you remain in the New Orleans Public Health Service Hospital?

THE COURT: Do you have a hospital record?

MR. GOLDSTEIN: Yes, sir.

A For about a week.

Q After that what happened to you?

A I was discharged from that hospital, and they told me I am able to travel back East to New York where I live at, and they told me to --

Q What was --

A Pardon?

Q I am sorry. Continue. I am sorry for interrupting.

A -- to see the doctor over here, go to the hospital over here.

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Q When you say "over here," over where?

THE COURT: Over where?

A Over in New York.

THE COURT: Staten Island?

THE WITNESS: No, it's on Houston Street.

Q In Manhattan?

A Downtown New York. Manhattan.

Q Is that also a Public Health Service clinic?

A Yes, sir.

Q Do you know what your duty status was at that time?

THE COURT: At what time?

Q At that time that you were sent from the Public Health Service Hospital in New Orleans to the Public Health Service clinic in New York.

A I was not fit for duty.

Q Did you start to undergo treatment in the Public Health Service clinic in Houston Street, New York?

A Did I go?

Q Yes.

A Yes, sir, I did.

Q How long did you go to the Public Health Service clinic in Houston Street for treatment by the United States doctors there?

A I don't know exactly how many times, but --

THE COURT: Were you an outpatient?

THE WITNESS: Outpatient clinic. I got treatments. But I don't know. A month or something.

THE COURT: You must have a record.

MR. GOLDSTEIN: Will the Court bear with me for a moment.

THE COURT: Yes. Have it marked if you are going to offer it.

MR. GOLDSTEIN: Yes. If your Honor please, I should like to offer into evidence the --

THE COURT: Just give it to the clerk. He will mark them. You don't have to tell what they are.

(Plaintiff's Exhibit 2 was marked for identification.)

xxx

MR. GOLDSTEIN: There are three hospital periods there.

THE COURT: He will count them up, counselor. You don't need to count them for him.

(Plaintiff's Exhibits 3 and 4 were marked for identification.)

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MR. GOLDSTEIN: If your Honor please, these are certified copies. May I now offer them into evidence.

THE COURT: All right. Just show them to your

adversary. He may not object to them. No use of anticipating trouble.

MR. STEARNS: Your Honor, I will admit these, subject to comparison of these during the lunch hour with the records I have.

THE COURT: You have some others?

MR. STEARNS: No, I have the same ones. I just want to make sure they are accurate.

THE COURT: All right, admitted, then, subject to comparison.

(Plaintiff's Exhibits 2, 3 and 4 were received in evidence.)

THE COURT: You may go on.

Q Mr. Porss, do you recall when you were first marked "fit for duty," sir?

THE COURT: Is it in the record?

MR. GOLDSTEIN: Yes, sir.

A Sometimes in August, I believe.

THE COURT: When?

THE WITNESS: July or August, I don't know exactly.

Q All right. July or August 1971?

A Yes, sir.

Q Did you then return to the clinic?

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THE COURT: Suppose you wait until your adversary has said what he has --

MR. GOLDSTEIN: As long as he states what is so.

THE COURT: I think he has.

MR. GOLDSTEIN: I think he hasn't.

THE COURT: I differ from you.

MR. GOLDSTEIN: I differ from you, respectfully.

THE COURT: I assume it is respectfully, but the fact is that he said he felt worse and he was marked "unfit for duty," and that was it.

Now, read the papers if you want to read the papers to the jury now.

MR. GOLDSTEIN: Judge, I don't want to go through fifty, sixty sheets to read to this jury.

THE COURT: You don't have to, to ascertain two or three markings "fit for duty" or "unfit for duty."

MR. GOLDSTEIN: All I want to do, Judge, is to find out from the witness when he was marked "fit for duty" ultimately and went back to sea ultimately.

MR. STEARNS: I object to the form of the question, "ultimately." "Ultimately" is an improper word in the context of the question.

THE COURT: Sustained as to form.

MR. GOLDSTEIN: How about "subsequently"?

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A After that?

Q After you were marked "fit for duty"?

A Yes, sir, I did.

Q Did you tell them how you felt at that time?

A Yes, sir.

Q What were you marked at that point, after you told them how you felt?

A I was marked "not fit for duty."

MR. STEARNS: Your Honor, this is all in the records.

THE COURT: I beg pardon?

MR. STEARNS: I say all these dates are in the records.

THE COURT: Yes. What is the use, counselor, if they are in the record? Save our time and the jury's time if you will utilize the records.

MR. GOLDSTEIN: All right.

Q Mr. Porss, did there come a time when you were ultimately marked "fit for duty"?

A Yes.

MR. STEARNS: Your Honor, he has testified that he was marked "fit for duty" in July or August 1971. What is the purport of the question "fit for duty"?

MR. GOLDSTEIN: But then the --

Q Were you subsequently marked fit for duty?

THE COURT: The answer is yes?

A Yes.

THE COURT: When?

THE WITNESS: March, in March '72, I believe.

THE COURT: March what?

THE WITNESS: 1972.

THE COURT: What date, do you know?

THE WITNESS: I don't know.

THE COURT: All right, you will have to get the record ultimately anyway, but go ahead.

Any further questions?

MR. GOLDSTEIN: Yes.

Q Mr. Porss, when did you first join a ship after the accident of June 1971?

A It was sometimes in November 1972.

Q Do you remember the name of the ship?

A I am not sure which one was it.

THE COURT: There is nobody else here to tell you.

Q If I mentioned the name Longview Victory, would that refresh your recollection?

MR. STEARNS: Linnfield.

Q Linnfield Victory?

A That is what I say. But I am not sure which one was it.

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THE COURT: What is the name?

THE WITNESS: Longview or Linnfield, either one.

THE COURT: He is not sure.

Q In any event, it was in November of 1972?

A Yes, sir.

Q Is that correct?

A Yes, sir.

Q What did you sail as on that ship, what was your rating?

A Able-bodied seaman.

Q Mr. Porss, are you now off that ship? Are you now off the Linnfield Victory?

A Yes, sir, I am.

Q Are you sailing at the present time?

A No, sir, I am not.

Q After sailing aboard the Linnfield Victory in November of 1972, did you undergo any further treatment for the condition resulting from the accident of June 1971?

MR. STEARNS: Objection.

THE COURT: Read the question, please.

(Question read)

MR. STEARNS: Objection on the grounds of competence. He can say why he went to the hospital, that is perfectly proper, but why he was treated --

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THE COURT: Yes, only things that a layman would know about, counselor. This question goes beyond that.

MR. GOLDSTEIN: All right.

Q Mr. Porss, when you left the Linnfield Victory, did you do so with a master certificate?

A Yes, sir, I believe I did.

Q You had a master's certificate to go to Marine Hospital, is that correct?

A Yes, sir.

THE COURT: Did you have some accident on that vessel?

THE WITNESS: No, sir, I did not.

Q Had you made any complaint to anybody aboard that vessel concerning any condition of your body?

A I believe I went to the chief mate for medicine for my back pain.

Q What did you tell him?

A That my back hurts.

Q Did it hurt and was it the same kind of pain that you had had --

THE COURT: One question at a time, please.

Q Was it the same kind of pain that you had had before you joined the Linnfield Victory?

A Yes, sir. Same area.

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Q Same area and same kind of pain?

A Yes, sir.

Q Did you get a master's certificate at that time from the officer that you spoke to?

A Now, I don't know exactly what ship I am talking about now. Sometimes I went to the doctor overseas; sometimes I got medicine from the chief mate.

MR. STEARNS: He is talking about the ship, whatever the name is, where he had the same back pains. Are you not?

MR. GOLDSTEIN: Yes Obviously.

MR. STEARNS: Did you get a master's certificate after getting off that ship?

MR. GOLDSTEIN: Let us ask it my way.

THE COURT: Wait, now. Don't interrupt with your question.

MR. GOLDSTEIN: Thank you, Judge.

THE COURT: The next question, Mr. Goldstein.

Q Did you get a master's certificate from that ship?

THE COURT: Which ship is thi

MR. GOLDSTEIN: The one where he spoke to the officer and made the complaint about the same kind of pain in his back.

THE COURT: That is rather indefinite without the

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name of the ship even, or when it was or where it was.

MR. STEARNS: The ship, your Honor, he testified he joined in November 1972.

THE COURT: Some ship.

Did you get a master's certificate from that ship?

THE WITNESS: I can verify that ship.

THE COURT: No, answer the question.

Q Mr. Porss --

THE COURT: Can't you do it without looking at some notes?

THE WITNESS: I have sailed on about ten ships or more. I can't remember all the names, which one was which.

Q Let me ask you this --

THE COURT: If he is going to use this to refresh his recollection, all right, but that has to be marked for identification.

Q Leroy, can we ask it this way, if you will: After you sailed again, did you ultimately get off or subsequently get off the ship to get further medical treatment?

A Yes, sir, I did.

Q What hospital or clinic did you return to for that treatment?

A For treatments I went back to Houston Street.

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Q And did you continue that treatment there?

A Yes, sir, I did.

Q Then were you again marked fit for duty after that treatment?

A After treatment, yes.

Q Did you then sign on another ship after you were marked fit for duty?

A Yes, sir.

Q How long did you sail aboard that ship, if you recall?

A I don't recall -- I probably remember the name, but --

THE COURT: You don't remember, all right.

A -- but I don't remember exactly the dates and amounts.

Q Do you have your discharge papers with you?

A Yes, sir, I have.

Q Can you tell this Court and jury what the dates of your employment were after June of 1971?

THE COURT: This is from his own recollection?

Q From your records and from the records of the --

THE COURT: No, no. If they are going to be records, they have to be marked for identification, so we know what he is refreshing his recollection from. I think

you know that.

Q May we ask you to refresh your recollection.

THE COURT: Yes, first get these papers marked for identification by the clerk, will you please? It is a simple and orderly way of conducting the trial.

Q Do you have those papers? Are these all of your discharges?

A Yes. All of my ships.

THE COURT: Let the clerk mark it for identification.

(Plaintiff's Exhibit 5 was marked for identification.)

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THE COURT: Now you may ask him to look at this. First ask the question so that we know what he is looking for. If he cannot remember, let him look at the paper to refresh his recollection.

Q Mr. Porss, can you tell us, without looking at those papers, the names and the dates of service aboard ships at any time from November 1972 onto the present time?

A Well, the next ship after Aleutian, Overseas Aleutian, was from November to approximately February sometime, next year, in '73.

Q Would looking at those papers refresh your recollection?

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A Yes, sir.

Q What are those papers?

A These are called discharges from the master of the ship, from the date we signed on, served on the ship, until we got paid off with the ship or whatever.

Q Are those United States Coast Guard papers?

A Yes, sir, they are.

Q Is every seaman required to keep those?

A Every seaman gets one of these when he signs off the ship.

Q And you have all of your discharges from the time of this accident on; is that correct, sir?

A As a matter of fact, I have all my discharges --

THE COURT: Just answer his question.

A Yes, sir, I have all of them.

THE COURT: Don't give us any further thoughts about it.

Q Would you mind looking at the discharges of all of the ships that you sailed from November 1972 on, and tell us their names and the date that you signed aboard the ship and the date that you signed off the ship?

THE COURT: Do you want to let him make that up in the form of a statement during recess, counselor, to save our time?

MR. STEARNS: Your Honor, at this time I will offer Mr. --

THE COURT: Maybe counsel has a copy. Show it to Mr. Goldstein.

MR. STEARNS: I will show Mr. Goldstein the documentation pages, not the covering page. Perhaps you can use that to straighten this out.

MR. GOLDSTEIN: I don't know that we are straightening anything out, Judge. I think we are just asking this man what ships he sailed on.

THE COURT: Well, I thought it would --

MR. STEARNS: I will consent if he reads from this document, November 1972, and asks him whether or not that is accurate.

Q Mr. Porss --

THE COURT: Can't you examine that during the recess?

MR. GOLDSTEIN: Be more than happy to, Judge.

THE COURT: And agree and save us some time, counselor?

MR. GOLDSTEIN: Be more than happy to.

THE COURT: Do that then. Finish up your oral examination.

Q Mr. Porss, how do you feel today, sir?

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A I feel pains as usual when I have to stand or sit too long. My back starts to ache.

Q Do you know what is wrong with your back, sir?

MR. STEARNS: Objection.

THE COURT: Sustained. He is not a surgeon or physician.

Q What do you feel with your back?

A My back is weak.

Q How does that weakness show itself to you?

A How is --

Q How does that weakness show itself to you? What do you feel?

A Well, whenever I have to work in a stooped position, lift, my back becomes stiff.

MR. STEARNS: Your Honor, are these questions subject to later medical connection? Because he is not established and cannot establish himself in connection with --

THE COURT: Well, you will have to object to the questions, then, counsel.

MR. STEARNS: I object to them, because there is no proper foundation.

THE COURT: Sustained. I think it is a medical question, counsel.

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MR. GOLDSTEIN: How he feels?

THE COURT: I didn't say that.

MR. GOLDSTEIN: The question was how he feels, Judge, not how a doctor feels.

THE COURT: Now, just calm down, will you, sir?

MR. GOLDSTEIN: If you will let me try the case, Judge, I will try the case.

THE COURT: Yes, but you will have to try it in accordance with the usual rules. Don't forget that. What I am saying is that your question, I believe, asked him the causes of things.

Read back the last several questions and answers, please.

(Record read)

THE COURT: It goes over a little bit into the medical, but we will leave it.

MR. GOLDSTEIN: Thank you, sir.

THE COURT: I take it you are going to call a physician?

MR. GOLDSTEIN: Of course.

THE COURT: Well, of course. I just wanted to be certain, that is all, counsel.

Anything else from this plaintiff now?

MR. GOLDSTEIN: No, that is all.

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THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. STEARNS:

Q Look, Mr. Porss, if you please, at your discharges, and particularly the discharge from the ship you served on immediately after the Overseas Aleutian.

THE COURT: This is not in evidence, is it?

MR. STEARNS: No, sir.

THE COURT: Do you want to let it go in, counselor, to save time, subject to check?

MR. GOLDSTEIN: I was willing to allow Mr. Porss' discharge slips to go in. They are the official records.

THE COURT: Take them or not, counselor?

MR. STEARNS: Your Honor, I have no objection to that at all. All I want now, and we can put this in evidence after the jury is discharged, is for him to tell me what the name of the ship was.

Q And you can do that, can you not, Mr. Porss?

A Yes, sir.

Q What is the name of the ship?

A S.S. Longview Victory.

Q Longview Victory.

A Yes, sir.

Q Not Linnfield Victory, is that right?

A No.

Q That is the ship you joined in November 1972?

A That is right.

Q And you served on that ship until February 1973 or thereabouts?

A 3/9/73.

Q So that is March 9, 1973. That was the first ship after the Overseas Aleutian; right?

A Yes, sir, that is correct.

Q You had no accident on that ship, did you?

A No, sir.

Q No, you did not.

A No, sir, I did not.

Q And you never sued anybody as a result of any accident that you said occurred on that ship, is that right?

A No, sir.

MR. GOLDSTEIN: He never said an accident occurred on it. The testimony is that no accident occurred on it.

THE COURT: Are you objecting?

MR. GOLDSTEIN: Yes, I am.

THE COURT: Overruled. Let us have it in the open.

Q You received no master's certificate, is that

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correct?

THE COURT: Do you understand the question? I think you must.

A I am still lost with the ships' names here.

Q You are lost with the ships' names, sir?

A Yes, sir. I am confused.

Q What do you mean by that?

MR. GOLDSTEIN: If your Honor please, I object to this harassment.

THE COURT: There is no harassment. What was the name of the ship, please?

THE WITNESS: One of the ships --

THE COURT: No, not one of the ships.

THE WITNESS: I hurt my --

THE COURT: Just listen to this question so we can get along here.

What was the name of the ship which you went on after the Aleutian?

THE WITNESS: This is Longview Victory.

THE COURT: What is that?

THE WITNESS: Longview Victory.

THE COURT: What is the problem about that? Is that the incorrect answer?

THE WITNESS: No.

THE COURT: Go ahead, counselor.

Q You had no accident on that ship, is that right?

A But one of the ships my thumb was hurt after.

Q And you are not sure what ship it was?

A I don't remember which ship it was.

Q You are not sure whether or not it was on the Longview Victory or not, is that right?

A No, sir, I don't.

Q Do you remember how this accident happened?

MR. GOLDSTEIN: Objection, if your Honor please. No claim here.

THE COURRT: His son, did he say?

MR. GOLDSTEIN: His thumb.

MR. STEARNS: His thumb.

THE COURT: His thumb.

MR. GOLDSTEIN: There is no claim here for an accident to a thumb.

THE COURT: Sustained.

MR. STEARNS: In view of the fact that he has denied an accident and has suggested in his direct examination that the reason he got off the Longview Victory was his back, I am entitled to --

MR. GOLDSTEIN: If your Honor please --

THE COURT: Will you sit down?

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MR. GOLDSTEIN: May we not have any speeches by counsel. If he wants to talk to your Honor, he should talk to your Honor outside the ears of the jury.

THE COURT: I am trying to ascertain his objection. What is your objection?

MR. GOLDSTEIN: My objection is that he is making a speech and he should not be. Your Honor has told us both not to make speeches.

THE COURT: Yes, I do tell you both. However, read the last question and answer if there is one.

(Question read)

THE COURT: On the Longview Victory, counselor?

MR. STEARNS: Yes, sir. I am prepared to explain the relevance and the manner of the accident.

THE COURT: I don't know that it is pertinent. Why is it relevant, counselor?

MR. STEARNS: If I may be permitted to say this: He claims on that ship an accident occurred through the act of a coworker, much as he claims here.

MR. GOLDSTEIN: Oh, Judge, why do we have to go through this -- "much as he claims here"? Does a jury have to hear this?

THE COURT: No, it does not have to hear it.

MR. GOLDSTEIN: Doesn't your Honor think that the

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jury has been prejudiced by this?

THE COURT: No, I don't. You may sit down if you like. I am going to sustain the objection. If you will just have a little patience, maybe we can get along faster.

Q Why did you get off the Longview Victory, sir?

A I don't remember exactly now.

Q Did you say on direct examination that you got off because of pains in your back?

A I don't remember. You have the records, all of them. Why ask me that?

THE COURT: That is no answer.

THE WITNESS: Well, I don't remember. All right?

THE COURT: All right, he doesn't remember why he got off the Longview Victory. Leave it. Unless there is something else that is relevant to this case.

Q Did you start a lawsuit as a result of that injury on the Longview Victory?

MR. GOLDSTEIN: Objection, your Honor. He said there was no accident on the Longview Victory. Four times.

A One of the ship was. I don't remember which one. He is right. But I don't remember which ship it was.

THE COURT: I am going to allow the question.

MR. GOLDSTEIN: If your Honor please, I object to any --

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THE COURT: Yes, I noted your objection, and I am overruling it. That is it.

MR. GOLDSTEIN: Are we now talking about a thumb or are we talking about a back?

THE COURT: I don't know what the accident is or what the injury was.

MR. GOLDSTEIN: The witness has testified it was a thumb. It has nothing to do with this case.

THE COURT: Will you please sit down a moment? Now will you please read the last question.

(Question read)

THE COURT: Whatever the injury was? Is that the question, counselor?

MR. STEARNS: Yes, sir.

THE COURT: Do you remember?

THE WITNESS: I don't remember.

Q Do you remember whether you sat for a deposition, what you referred to as an inquest, on December 12, 1973, in connection with that claim?

A Which claim?

MR. GOLDSTEIN: What claim?

Q The claim against the owners of the Longview Victory.

A I did have an inquest, yes, sir, I believe so.

Q And you came and you testified in front of an attorney and somebody who had taken your oath and you described how the accident happened. Isn't that so?

A Yes.

Q You got money for this suit, did you not?

A Out of court they gave.

Q Yes. Did you, getting off the Longview Victory, March 9, 1973, get a master's certificate?

A I believe I did.

Q For what reason?

A I don't remember.

Q What were you complaining about at the time?

A You have the record.

I don't remember.

Q Were you complaining about your back?

A I don't remember.

Q Were you complaining about your chest?

A On the ship I did. On the back and chest and thumb.

Q Is this your signature?

A I don't remember if that was Longview Victory, but one --

Q Is that your siganture there?

A Is that Longview Victory?

THE COURT: That has to be marked for identification

first, counselor, please.

(Defendant's Exhibit A was marked for identification.)

Q Referring to Defendant's Exhibit A, Mr. Porss, will you tell me whether or not the upper signature on that document is a copy of a master's certificate issued to you on March 9, 1973?

A Yes, sir, it is.

Q For what reason were you issued this master's certificate?

THE COURT: Doesn't it state on there?

A Left side, chest pain.

Q Is that in your own writing?

A Pardon?

Q Is that in your own writing, left side, chest pain?

A Yes, sir.

Q Do you remember writing that out?

A It's my writing. I don't remember to say when I wrote it.

Q Do you remember the occasion when you went in to ask for a master's certificate? Do you remember that, the occasion on the Longview Victory when --

A Yes, how many years was that? I don't remember exactly.

THE COURT: You can tell as easily as the rest of us how many years.

Q When, sir? Was it March 9, 1973?

A It was probably, by the time we reached the port, day before maybe.

Q Sir, concerning the document, you asked for the master's certificate when you got off the ship, didn't you?

A Yes, sir.

Q When did you get off the ship according to your own discharge?

A The discharge shows 3/9/73.

Q And the discharge shows 3/9/73 as well. March 9, 1973. Isn't that so?

A That's correct.

MR. STEARNS: The witness is referring to Defendant's Exhibit A.

At this time I offer it in evidence.

MR. GOLDSTEIN: No objection.

THE COURT: Mark it.

(Defendant's Exhibit A was received in evidence.)

Q You don't remember the circumstances --

THE COURT: Wait a minute. Hand it to the clerk.

Q It is your testimony, then, sir, that you don't remember the circumstances of the request and the receiving

of that master's certificate, Defendant's Exhibit A, because it is too long ago, isn't that so?

MR. GOLDSTEIN: If your Honor please --

A I can't remember the exact moment; that is what I am saying.

MR. GOLDSTEIN: I object to the form of the question.

MR. STEARNS: It is cross-examination.

MR. GOLDSTEIN: It is not accurate.

THE COURT: What is wrong with the form of the question?

MR. GOLDSTEIN: The form of the question. It puts in certain facts that are not in evidence.

THE COURT: Read the question, please.

(Question read)

THE COURT: Overruled. I think it is fair cross-examination.

Q Is that what you are trying to say, Mr. Porss? Are you trying to say you don't remember the 1973 master's certificate because it is too long ago?

A I remember 1973, March, we were paid off in New Orleans.

THE COURT: That is not the question.

A And I remember I took a master's certificate.

Q Do you remember asking for a master's certificate?

A Yes, asking, getting it, yes.

Q When you went to get it from the chief mate or the master, do you remember saying that you had pains in your chest, that as a matter of fact, going further, writing out in your own writing, "Only pains in the left side of chest"; do you remember that?

A Right.

Q Did you testify on direct examination, in response to a question asked you by your attorney, that you got off that ship because of pain in your back?

A What was my answer then?

Q Well, what is your answer, sir, not what was it?

A I told everybody in this court I don't remember which ship is which, when we are talking about.

Q Mr. Porss, we are trying to test your memory. You don't remember, then, the circumstances surrounding the 1973 master's certificate.

MR. GOLDSTEIN: He does. If your Honor please, he has just testified --

THE WITNESS: I am talking about I don't remember the names of the ship in order.

MR. GOLDSTEIN: Please, Mr. Porss.

If your Honor please, I object. Mr. Porss has just

testified to the circumstances.

THE COURT: Why do you object? He has already answered. What is the objection?

MR. GOLDSTEIN: I object because he is assuming facts not in evidence. He says that Mr. Porss does not remember. Mr. Porss just testified to it four seconds ago.

MR. STEARNS: Your Honor, if it will help the Court, I will withdraw the question.

THE COURT: Question withdrawn.

MR. GOLDSTEIN: Good.

THE COURT: Question withdrawn.

Q Do you remember now having an accident on the Longview Victory? Do you remember that?

A Yes.

Q Do you now remember that you started a lawsuit as a result of that accident?

A I did.

Q Do you now remember receiving money and sitting for a deposition as a result of that accident claim?

A I didn't receive any money at the deposition.

Q No, not at the deposition, but those two facts: going to the deposition and later receiving money.

MR. GOLDSTEIN: Objection.

Q Do you now remember that?

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MR. GOLDSTEIN: Objection, if your Honor please. I should like those two separated.

THE COURT: Yes, separate them, counselor.

Q Do you remember going to the deposition, after you started suit in that case? Do you remember that?

A What do I remember?

Q We are talking now about the suit, the lawsuit that you started as a result of some accident that you said you had on the Longview Victory. You stood or sat for a deposition, or an inquest in your words --

THE COURT: Do you want to refresh his recollection from the deposition?

Q Do you remember being there on December 12, 1973?

A I don't remember --

Q At the offices of a law firm called Dougherty, Ryan, Mahoney, Pellegrino & Giuffra? Do you remember that?

A I remember the occasion. I don't remember all the names.

Q Do you remember being there with your attorney, Abraham Weisberg?

A He was probably there.

Q Sir, do you remember saying, in response to a question asked you by your attorney on direct examination, that you had not had any accident on the ship that you sailed

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on after the Overseas Aleutian, the one you joined in 1972? Do you remember saying that?

A When did I say that?

Q On direct examination.

A After?

THE COURT: Here.

Q Here, sir, here, five minutes ago, if that. Do you remember that?

THE COURT: I don't think it is quite clear, counselor.

Q Do you remember referring to a ship called the Linnfield Victory and saying you thought that was the ship you had next sailed on after the Overseas Aleutian?

THE COURT: Do you understand the question?

THE WITNESS: You are asking me a question?

THE COURT: Yes, of course he is asking you a question.

A Well, he is talking and looking at the wall.

THE COURT: He isn't talking to himself.

Q Would you like the question read back?

A Yes.

THE COURT: Read the question, please.

THE WITNESS: There is something misleading about it. Not after; before, maybe.

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THE COURT: If you don't understand it, just say so.

(Question read)

Q Do you remember being asked by your attorney about the next ship after the Overseas Aleutian? Do you remember that?

A Yes.

Q Do you remember saying that you joined a ship in November 1972, which was the first ship after the Overseas Aleutian?

A Right.

Q Do you remember that testimony?

A Yes.

Q Do you remember saying or suggesting or responding to a question from Mr. Goldstein where the description of this ship was the Linnfield Victory? Do you remember that?

A Yes, sir.

Q And do you remember being asked whether or not on the ship that you joined in November 1972, the first one after the Overseas Aleutian, you had had an accident on that ship? Do you remember that? And do you remember what your response was, what your answer was?

THE COURT: Speak; don't just nod your head, sir.

A I remember, yes, sir.

Q Do you remember then denying having had an accident

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on that ship?

A Yes, sir, I did. Accidentally. And later on I tried to correct it, didn't I?

Q Yes, sir.

A Read the whole thing.

Q That is right, sir. Now, accidentally you denied having had an accident that you said at one point in time occurred, that you sat for a deposition for, that you received money for. Is that your testimony?

THE COURT: That is too much in one question, counselor.

Q You attribute your failure or your denial of that accident to an accident. Is that your testimony?

MR. GOLDSTEIN: If your Honor please, I don't quite understand what we are talking about here.

THE COURT: I don't understand that question.

MR. GOLDSTEIN: And there has been --

THE COURT: I will sustain an objection as to form, if that is what you want to say. Just voice your objection. I am not overlooking your objections.

Q Is it your testimony, sir, that inadvertently, inadvertently --

THE COURT: I don't know if he knows what that means.

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MR. STEARNS: Yes, I will withdraw that. Sorry.

THE COURT: I might say here, this is in evidence, so I think I may refer to it, that this master's certificate states that he was employed on the American Flag S.S. Longview Victory from 11/20, November 20, 1972, to March 3, 1973.

MR. STEARNS: It is March 9, your Honor.

THE COURT: March 9. I stand corrected. It is March 9. That is correct.

Q You claim that on thie ship, the Longview Victory -- what day do you say that accident happened?

MR. GOLDSTEIN: If your Honor please, I object to this question.

Q What day did the accident happen?

MR. GOLDSTEIN: Wait a minute. Do you mind if I get a ruling on objection?

THE COURT: Wait, now. You object?

MR. GOLDSTEIN: Yes.

THE COURT: What is the objection?

MR. GOLDSTEIN: The objection is that --

THE COURT: You want to argue with him?

MR. GOLDSTEIN: Well, he continues questioning as though my objection has no standing. I would like a ruling from your Honor, not from him.

THE COURT: Well, I will tell you. The objection

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is overruled.

MR. GOLDSTEIN: Fine. Now you can continue, Mr. Stearns.

Q When did this accident on the Longview Victory occur?

A I don't remember. The date, no.

Q Was it January 7, 1973?

A Could be. It was a day just before we arrived at Vietnam.

Q Do you remember how this accident happened?

A Yes, sir.

Q Do you remember when you first told somebody aboard the ship when the accident happened?

MR. GOLDSTEIN: If your Honor please, objection to this entire line of questioning as totally irrelevant.

THE COURT: We only have one question before us. I will sustain this objection.

THE COURT: You may ask him when the accident occurred on the Longview Victory.

Q When did it occur, sir?

A I don't remember the exact date.

Q Can you estimate by month what month?

A It could have been in January.

THE COURT: When is it?

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MR. STEARNS: "It could have been in January."

A In January.

THE COURT: 1973, that is, Mr. Witness? January 1973 you are speaking of; correct?

THE WITNESS: No, that --

THE COURT: 1972?

THE WITNESS: Wait a minute.

THE COURT: It couldn't be that. You did not go on the ship until November 1972.

THE WITNESS: '73, yes, that is correct.

THE COURT: All right, January 1973, to clear up the record. Very well.

(Defendant's Exhibit B was marked for identification.)

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Q I show you Defendant's Exhibit B, Mr. Porss. I will ask you first whether or not you can recognize it. What is it a copy of?

A I don't know what they call that.

Q Was it one of the legal papers that was prepared and filed in connection with your suit against the owners of the Longview Victory? You believe so; is that your testimony?

A Well, that is what the paper is.

Q Right. As a matter of fact, you can remember, can

you not, signing on the back of this the verification?

A I don't deny anything about it.

Q And on the face of it you allege that the accident occurred January 7, 1973; is that correct?

A This is correct if it is dated there.

Q Does that refresh your recollection as to when the accident occurred?

A Pardon?

Q Does it refresh your recollection as to when the Longview Victory accident occurred?

A I believe this date is correct, January 7, '73.

Q January 7, 1973.

THE COURT: All right, that is enough on that.

Q When did you tell the chief mate about this accident?

MR. GOLDSTEIN: Objection.

Q When did you report it?

MR. GOLDSTEIN: Objection.

THE COURT: Sustained.

A I reported --

MR. GOLDSTEIN: Mr. Porss, please. When the Judge makes a ruling, abide by it.

THE WITNESS: I am sorry.

Q Is it your claim, Mr. Porss, that when you got off

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the Longview Victory that you had other than chest pains?

A On this ship I went --

THE COURT: No, no. Wait a minute. Just listen to the question.

Read the question.

Listen to the question and try to answer it.

(Question read)

THE COURT: Please answer.

A Yes, sir, I did.

Q What other pains do you claim that you had?

A Back pains.

Q You had back pains, then, you say, in March 197[illegible]; is that so?

A Right.

Q And you say, of course, that you had back pains June 1971, at the time of this accident in suit on the Overseas Aleutian; is that right?

A That is correct, that is when I was hurt.

Q You had never had such back pains before, is that right?

A I probably have back pains now and then. I can't deny it.

Q What do you mean "probably"?

A Come and go, you know.

Q How long have you had back pains that come and go?

A From work you get back pains once in a while.

Q How long have you had back pains that come and go?

MR. GOLDSTEIN: If your Honor please, I object to the form of the question.

THE COURT: Overruled. This is cross.

Q Mr. Porss, how long have you had back pains that come and go?

A All my life, that is all I can say, pains come and go, you know.

Q Have you gone to doctors and hospitals for treatment of this back pain prior to June 8, 1971?

A It's possible.

Q Sir, the question is not is it possible; the question is, did you, did you ever, before June 8, 1971, go to any hospital or any doctor for treatment of back pain?

A I don't recollect any hospital, but it is possible I went to a doctor.

Q How about United States Public Health Service hospital?

A No, I don't think so. I don't remember.

Q You don't think so.

A I don't remember any.

Q Do you remember answering interrogatories in this

case and verifying them on March 13, 1973, in response to a question that I would ask Mr. Goldstein to concede was an inquiry into prior hospital and medical treatment? Do you remember giving this answer?

MR. GOLDSTEIN: What page?

MR. STEARNS: It is Interrogatory No. 56.

THE COURT: No. 50?

MR. STEARNS: 56.

THE COURT: No. 50 or 6? I am sorry, Interrogatory 6?

MR. STEARNS: Five six.

THE COURT: Five six. All right.

Q Do you remember signing an answer to interrogatory in which you said the plaintiff --

THE COURT: Read the interrogatory first.

MR. STEARNS: Your Honor, 55 and 56 have been answered, in my opinion, in a combined fashion. I wi-l read 55 and 56, because the answer to 55 is in 56, in my opinion.

"55. Set forth your inpatient record for the last eight years at every public and private hospital and clinic, consisting of (a) the name and location of each facility; (b) the dates you whre admitted and discharged from each facility; (c) whether you were declared fit for duty on discharge, and if not, the prognosis on discharge;

(d) the nature of the injury or illness which caused you to be treated at each such facility; (e) the nature of the treatment given at each such facility."

56 asks for essentially the same information after the date of the alleged accident, which would be after June 1971.

He answers 56 in 55, and 55 in 56.

THE COURT: Are you going to read any answers?

MR. STEARNS: I am going to read the answer to 56, your Honor, although seemingly that is not right. What happened was that, in the questions, 55 is the prior history and 56 is the subsequent history. In the answers these are reversed. 56 is 55 and 55 is 56.

What I really need now is a stipulation from Mr. Goldstein (1) that there is this transposition and (2) that the answer that I read, which will be 56, is of the prior history of treatment.

THE COURT: Do you want to do that, counselor?

MR. GOLDSTEIN: No, sir, because it is not accurate and it is not correct.

THE COURT: Maybe it is.

MR. GOLDSTEIN: Well, it isn't, Judge. If your Honor will read No. 55 and No. 56 --

THE COURT: I will read them, of course; I will

read them.

MR. GOLDSTEIN: -- you will see that they don't ask for prior and subsequent. They ask for inpatient and outpatient.

THE COURT: All right, let me look at it. Give me a chance to look at it, will you?

(Pause)

That is the inpatient record for the last eight years.

MR. GOLDSTEIN: Correct.

THE COURT: And 56 happens to be since the date of the alleged injury --

MR. GOLDSTEIN: It says the outpatient record, Judge, not the inpatient record. That is the difference in the question.

MR. STEARNS: I agree that is absolutely right. Mr. Goldstein is right. 55 refers to inpatient.

THE COURT: That is correct. And which do you say, Mr. Stearns, is the correct answer to 55, which number?

MR. STEARNS: 55 is the inpatient record, and that is fairly answered. 56 is subsequent.

THE COURT: I am going to take the recess at this time, and I will take it up with the attorneys in that recess. You may retire now until 2 p.m.; a little before 2 come back.

* * *

(The jury left the courtroom.)

THE COURT: If there is an obvious mistake here --

MR. STEARNS: I think Mr. Goldstein is essentially correct. He is right and I am wrong in this.

THE COURT: Then you want to change the questions?

MR. STEARNS: Yes. The questions then would be --

THE COURT: On 55 first?

MR. STEARNS: No. 55 and 56 are -- what has happened is this. 56 has been mentioned in detail. There is a long statement of prior --

MR. GOLDSTEIN: We overanswered 56, Judge That is what it comes down to.

THE COURT: May I hear one of you at a time, for once?

MR. STEARNS: 56 is the detailed statement of prior hospitalization, inpatient and outpatient.

THE COURT: That is asked in which number?

MR. STEARNS: That is asked in 19 --

THE COURT: What number? 55?

MR. STEARNS: 56. What happened is this. He was asked in --

THE COURT: If you will just orient me so I can get to the right question in the first place. Where is 55 answered, please?

MR. STEARNS: 55 is answered at 55. This is a

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mistake on my part, Judge. 55 refers to inpatient at any time, eight years. 56 refers to outpatient since, subsequent. In answer to 56 --

THE COURT: There is no error in 56, then, is there?

MR. STEARNS: No, sir. And there is no error in 55.

THE COURT: Except the inpatient business.

MR. STEARNS: No, except for the fact that he goes on at length and gives detail as to prior without mentioning any prior complaint of back.

Now, what I need do is move on to the right interrogatory, and that I believe is 51.

THE COURT: Now you want to propose 51?

MR. STEARNS: Right. "Have you ever suffered the same or similar illness or injury at any other time?" The answer to that is: "The plaintiff never suffered the same or similar injury before the accident involved here."

THE COURT: Any objection to 51 and its answer, counselor, Mr. Goldstein?

MR. GOLDSTEIN: Judge, do I have to object to an answer? These are my interrogatories. I don't know that I should object. All I want to do is keep Mr. Stearns from explaining to the jury with inaccuracy just what is called

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for and just what is answered.

THE COURT: These are your answers prepared by you.

MR. GOLDSTEIN: That is correct. I have no right to object to those answers.

THE COURT: All right. I don't think you have. So you may read the first one. What is the first one?

MR. GOLDSTEIN: Judge, he can read any one he wants to.

THE COURT: All right, go ahead, then, counselor.

MR. GOLDSTEIN: He is entitled to.

THE COURT: Take it while it is hot.

MR. STEARNS: Right.

THE COURT: The first thing after lunch.

MR. GOLDSTEIN: But he is not allowed to ask the plaintiff about them. If he wants to read interrogatories as admissions, he has every right to.

THE COURT: All right.

MR. STEARNS: Well, it is -- I am sorry for interrupting.

THE COURT: That does not pass upon any cross-examination questions.

MR. GOLDSTEIN: I don't say it does, but he does not have the right to cross-examine him on the basis of the answers to interrogatories.

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THE COURT: Since when has that been any rule of this court or any other court? That is absurd.

MR. GOLDSTEIN: Only if he can establish that they are inconsistencies. He does not have any right to say, "Did you make this answer?", and then just read the answer.

THE COURT: Wait a minute. There are two things here. One relates to cross-examination. The other relates to these interrogatories. Counsel for the plaintiff has said here that defendant may read any of these answers. Mr. Goldstein, to repeat, has said that Mr. Stearns may read any questions and answers from the interrogatories.

MR. GOLDSTEIN: Any attorney has any right to.

THE COURT: And he has the right to cross-examine too and point out inconsistencies.

MR. GOLDSTEIN: Only for the purpose of --

THE COURT: I don't know what you are driving at There may be no inconsistency.

MR. GOLDSTEIN: Then he does not have the right to cross-examine him on them.

MR. STEARNS: I will agree, and the inconsistency is established.

THE COURT: He has the right to try at last.

MR. STEARNS: The inconsistency is established. He said he had prior back pain before, since childhood. In

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answer to an interrogatory when he was asked about a prior accident or illness, 51, he gives the wholly opaque response, "Plaintiff never suffered the same or similar injury before the accident alleged."

MR. GOLDSTEIN: Correct. He was never injured before.

MR. STEARNS: That is the craft of the legal profession, I assume.

MR. GOLDSTEIN: Please, don't give me that nonsense.

THE COURT: Let him finish his statement.

MR. GOLDSTEIN: He finished, Judge.

THE COURT: I don't think he did.

Proceed, Mr. Stearns --

MR. STEARNS: This is --

MR. GOLDSTEIN: Judge, No. 1, it was not wholly opaque. Can I answer now?

THE COURT: No.

MR. GOLDSTEIN: He is making charges all over the place.

THE COURT: I am listening to Mr. Stearns, if you will be courteous enough to let him finish. Then I will listen to you, counselor, about this.

MR. STEARNS: The situation is this: He was asked for prior history of the same or similar illness --

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THE COURT: That is in '51.

MR. STEARNS: 51. -- illness or injury. He responds to that by saying: "Plaintiff never suffered the same or similar injury before the accident involved herein."

THE COURT: What is the point?

MR. STEARNS: The point is that he has not responded, of course, by saying plaintiff has not suffered from the same or similar injury or illness, because now we have a man admitting consistent back pains since childhood.

MR. GOLDSTEIN: No, consistent back pains since childhood was no: --

THE COURT: Will you keep still?

MR. GOLDSTEIN: Judge, I can't keep still when he refuses to allow an accuracy in the record here. What are we doing here? He puts in words, "consistent back pains"?

THE COURT: I am trying to listen to him and you interrupt.

MR. GOLDSTEIN: You don't listen to me at all.

THE COURT: Oh, I will listen to you.

MR. GOLDSTEIN: Aren't we entitled to give your Honor equal share, or is this just a one-way inquest?

THE COURT: Stop stewing.

MR. GOLDSTEIN: I always stew around when I think I am being taken advantage of.

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THE COURT: All right. You are very frank about it.

MR. GOLDSTEIN: I certainly am, Judge.

THE COURT: All right. I don't mind listening to you if you will give him a chance.

MR. GOLDSTEIN: When will you not mind listening to me?

MR. STEARNS: Your Honor, may I interrupt to say that Mr. Goldstein's point is right. He did not say consistent back pain since childhood. He said back pain since childhood.

MR. GOLDSTEIN: Back pains that come and go, he said, as anybody's. That is his testimony.

THE COURT: Let us get down to earth if we can, please. Which ones do you want to ask now, counselor?

MR. STEARNS: It would be 51.

THE COURT: 51?

MR. STEARNS: Which would be the only one.

MR. GOLDSTEIN: Where is the inconsistency in 51, before we start attacking the plaintiff about it?

THE COURT: Do you say that it is inconsistent, counselor?

MR. STEARNS: It is inconsistent, because it does not respond --

MR. GOLDSTEIN: That is not an inconsistency.

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THE COURT: Yes, let him finish, will you?

MR. STEARNS: He is asked about illnesses and/or injuries, and he says -- and I assume now that this is said cleverly, that is, with forethought -- he says, "Plaintiff has never sustained the same injury," denying prior injury. Now he admits on the stand prior history of back pain, that is, prior illness of similar sort.

MR. GOLDSTEIN: He does not admit any illness at all. He admits a pain that comes and goes from time to time.

THE COURT: I think you are splitting hairs, counselor.

MR. GOLDSTEIN: I think he is, Judge.

THE COURT: Well, it is mutually between you and him; that is all I can say.

MR. GOLDSTEIN: Your Honor, may I ask Mr. Stearns and you to show me any inconsistency?

THE COURT: I think there is inconsistency. He talked about pains and aches in his back; I think there is no question about it. Some degree, no matter how much it is, is for the jury to consider. I am going to allow question 51. Exception to Mr. Goldstein.

MR. GOLDSTEIN: Your Honor is going to allow it to what extent? I don't understand.

MR. STEARNS: Just to read it and to ask him about

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it.

THE COURT: To read it and ask him about it. That is it.

MR. GOLDSTEIN: Your Honor has ruled that there is an inconsistency there?

THE COURT: I am not ruling it. He may ask him about it. It will be the jury's duty to determine whether there is an inconsistency. That is the rule.

MR. GOLDSTEIN: Your Honor will note my exception, please.

(Luncheon recess)

AFTERNOON SESSION

(In the robing room)

THE COURT: Mr. Goldstein and Mr. Stearns, I have reviewed my ruling with respect to Question No. 51 of the interrogatories, and I have some perhaps slightly different ideas than before. I think what you are really attempting to do in effect is to change the question. On the other hand, you will have every opportunity, if you can produce it, to show any prior condition, any prior accident, any prior physical condition, which relates, somehow at least, to the claims that he is making on this accident. There is no doubt about that. On that basis I admitted this master certificate, which is in question. And he said something else about that, I think, before. So I am going to keep out, I am going to rule that the interrogatories should not be admitted, because I do not believe that there is apparent or indicated any real inconsistency. But I limit it, you see, as indicated. So that it does not preclude you, it should not prevent you, in all fairness, to produce proof about prior accidents, prior conditions, prior illnesses, and the same subsequent to the claim in this case.

MR. STEARNS: Your Honor, if I may say this: I understand that part of your ruling. I understand the first part too. But, on that, what I was trying to do with the

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interrogatories, and perhaps it can't be done well, perhaps it can't be done effectively, is to demonstrate that, notwithstanding the fact that over sixty interrogatories were asked inquiring -- I am now speaking of 51 -- specifically as to prior illness or injury, the prior history that he now admits of pain in his back was not disclosed.

Now, 51 --

THE COURT: Maybe counsel will stipulate to that.

MR. STEARNS: I will accept that and forget all about the interrogatories.

MR. GOLDSTEIN: There is no prior illness. He was asked for prior illness. There is no prior illness.

THE COURT: You are again getting into the verbiage. I have ruled. I am going to rule as I just said. That is my ruling. You may go at it any way you believe to be proper, and which is proper, after I rule on it, to ascertain prior illnesses,prior conditions, prior accidents, and the same as to subsequent ones. That is it.

I don't want to get into any --

MR. GOLDSTEIN: If your Honor please, one thing.

THE COURT: What is it?

MR. GOLDSTEIN: I made the telephone call to the doctor. He is not available tomorrow. He is available Thursday.

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does not take place automatically unless the witnesses are produced. That is elementary, Dr. Watson.

MR. GOLDSTEIN: Judge, at the time that I asked your Honor for a full trial, I informed your Honor at that time that I had not called the doctor.

THE COURT: Yes, you informed me, but you did not know when you would be able to get him.

MR. GOLDSTEIN: And that is true, and I still don't know, except that I have now found out that the doctor is available on Thursday. Why should your Honor charge me or charge this poor plaintiff for something that is not our fault?

THE COURT: I am charging you, not the plaintiff.

MR. GOLDSTEIN: Well, your Honor said the plaintiff. Your Honor is charging me, fine. Why should your Honor charge me? I have not done anything wrong.

THE COURT: Because you did not produce the witness and you are delaying the trial. It is as simple as that.

Well, we will go on. I will discuss it with you later.

It is about time we had cooperation of doctors in these cases.

MR. GOLDSTEIN: But don't charge the lawyers for

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what the doctors do.

THE COURT: Well, they are responsible too.

One of the federal judges in New Jersey, incidentally, I note, where there was a delayed trial, fined the attorney -- I forgot the amount -- but it was not small.

(In open court; jury present)

THE COURT: Madam Forelady and members of the jury, before lunch, as you may recall, there was some discussion with respect to the use of a certain interrogatory, a question and the answer thereto. For certain reasons, which I don't think I need to discuss with you -- they are technical -- I am not going to allow that question. However, I want to make it very plain to Mr. Stearns that he has, I believe, and I will pass on it if there is any objection, a right to inquire about the prior -- any prior accidents, condition or illnesses relating to this plaintiff or any subsequent accidents, illnesses or conditions.

With that, you may continue your cross-examination, Mr. Stearns.

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CROSS-EXAMINATION CONTINUED

BY MR. STEARNS:

Q Mr. Porss, did you have pain in your back at any time prior to June 8, 1971?

A Yes, sir, I did.

THE COURT: What is the answer, again?

THE WITNESS: Yes, sir.

Q Did you go to doctors or to clinics or to hospital at any time for treatment of this pain?

A Not to the Public Health Service.

THE COURT: Anywhere, he says, any hospitals?

THE WITNESS: Hospitals? I didn't go to any hospital.

Q Did you go to any doctor?

A It is possible I went to.

THE COURT: No. Did you or did you not?

THE WITNESS: It is possible. I don't recall.

Q But you are definite that you never went to the United States Public Health Service Hospital for any complaint to do with your back; is that what you are saying?

A Once I had a prostitis, or what do you call it, that would be, you know, bottom.

Q When you had --

A This is on the record, sir.

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Q When you had prostatitis --

A That's it.

Q -- you also had pain in your back, didn't you?

A I didn't complain about the back, but, you know --

Q The question is this: When you had these episodes of prostatitis, you had pain in your back, did you not?

A It's possible that I did.

Q It's possible. And you went to the doctors, did you, for treatment of this prostatitis with pain in the back?

A I went to the Public Health Service, I believe, in San Francisco.

Q You remember that, is that right?

A In San Francisco, I remember that.

Q At that time, that is the United States Public Health Service Hospital in San Francisco; is that right?

A Yes, sir.

Q Now you remember, do you, that you were treated there for some condition; is that right?

MR. GOLDSTEIN: Objection to the form of that question -- "Now you remember, do you." There has never been any denial of it.

MR. STEARNS: I will withdraw it.

THE COURT: All right, he withdraws that question

in that form.

Q Do you now remember being at the United States Public Health Service Hospital in San Francisco?

A Many times I went to the hospital.

Q Is it your testimony that you went there for this prostate infection which involves also pain in your back?

A I don't have the records, but I could have complained about pain in the back. Could be possible.

Q When did you first complain about pain in your back in connection with your going to the United States Public Health Service Hospital in San Francisco?

A I don't remember exact date.

Q Can you give an approximation, what year?

A You have the records, Mr. Goldstein has the records, I don't have them.

Q I am asking you for your recollection, sir. One reason we are asking you that is so that we can have your interpretation of what went on.

MR. GOLDSTEIN: Objection, if your Honor please. I was not allowed to ask just that question. The question to a layman as to an interpretation of a hospital record or report.

MR. STEARNS: Withdraw the comment.

Q Can you remember what year it was when you first

to San Francisco, the Public Health Service Hospital there?

A Could have been '68 or '9.

Q Could it have been 1967?

A Could be.

THE COURT: Could be, you say?

THE WITNESS: It is possible, yes, sir -- '67 could be possible.

Q How many times did you go to that hospital in San Francisco in 1967?

A I don't remember how many times.

Q Do you remember what time of the year it might have been, whether it might have beenin August 1967?

MR. GOLDSTEIN: If your Honor please, we are now discussing a condition of prostatitis, which is totally unrelated to this condition that we are claiming. There is no claim of prostatitis.

THE COURT: He said he had pains in his back, didn't he?

MR. STEARNS: He said prostatitis with pain in his back.

MR. GOLDSTEIN: The condition was prostatitis, Judge.

THE COURT: Overruled, counsel. Overruled. You can't win them all.

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MR. GOLDSTEIN: I would like to win a fair share of them, Judge.

THE COURT: You will.

Q Any other hospitals or clinics maintained by the United States Public Health Service hospitals or clinics that you have been to, for any complaint of pain in your back?

THE COURT: What is the question, again, please?

Q Other Public Health Service hospitals where he has complained of pain in his back.

A New Orleans. I think I went once to Staten Island.

Q Were these before 1971, before June 1971?

A For my back, I am talking about after June.

Q We are talking about before June 1971.

A Oh, could have been Honolulu, Hawaii.

THE COURT: Could have been what, sir?

THE WITNESS: Honolulu, Hawaii.

THE COURT: That is another place.

Q When did you go to the hospital in Honolulu, Hawaii, for back pains?

A I know I went there once or twice, but I don't remember was it after this or before that.

Q You are not sure, is that right?

A No.

Q What ship had you gotten off to go to the hospital in Honolulu?

A I don't even remember the name of the ship. Could have been Pecos.

Q The Pecos.

A Could be, because the Pecos where I shuttled to Vietnam, Far EAst.

Q When were you shuttling to Vietnam and the Far East?

A For sixteen months.

Q When were you shuttling to Vietnam and the Far East, what years, sir?

A Can I look at the papers?

Q Yes. Look specifically for the Pecos. When were you on the Pecos?

A I was on Pecos from November 1, 1967, until -- my records here show until 8/3/68.

Q In any event, you were on the Pecos before you were on the Overseas Aleutian, and that was before this accident of June 8, 1971, allegedly occurred; isn't that right?

A Yes, sir.

Q During the time you were on the Pecos going, or you did go on a couple of occasions or more to the Public Health

Service Hospital in Honolulu for treatment of your back, isn't that so?

MR. GOLDSTEIN: Objection to that form. Not for treatment of the back. It was for treatment of prostatitis.

MR. STEARNS: Your Honor, may I have a direction from the Court that I not be interrupted in cross-examination by the plaintiff's attorney?

THE COURT: Well, not entirely. That would be making you immune to objections. I cannot proceed to that extent. However, wait until the question has been asked, Mr. Goldstein, before you make your objection.

MR. GOLDSTEIN: I thought I had, if your Honor please. I am sorry if I interrupted before it was answered.

THE COURT: All right, your apology is received.

What is the objection?

MR. GOLDSTEIN: The objection is that the question talked about going to a hospital for treatment for the back, and the treatment was not for the back, and the plaintiff has never stated it was for the back. It was for prostatitis.

THE COURT: But this is cross-examination and counsel may ask.

MR. GOLDSTEIN: Judge, there is nothing in the injury about any back illness or back injury. It is for prostatitis, which is not a back condition.

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THE COURT: There was more than that to it. Overruled.

Q Will you answer the question, Mr. Porss?

THE COURT: Do you want the question read? Do you want the question read?

THE WITNESS: Which question?

THE COURT: The one that was asked.

Read it.

(Question read)

A That is not true.

THE COURT: It is not so, he says.

Q Did you go to the Houston Street outpatient clinic in June 1970 and complain of pain in your chest and back?

A It is possible I did.

THE COURT: Well, did you?

Q Did you, sir? Do you remember it?

A I say yes on my chest, no to the back unless I had a prostatitis complaint.

Q For how many years have you had a prostatitis complaint?

A I don't know. You have records. I don't have them.

THE COURT: You answer the question if you can. If you don't recall, say so. Don't ask questions.

A I don't know.

Q Well, can you estimate? Might be five years, ten years?

A I cannot estimate. No, sir, I cannot.

Q When did you first go for any treatment of prostatitis, to any hospital or clinic?

A When did I go first?

Q First go.

A I don't even know that, exactly.

Q Are you saying that you did not go to the Houston Street clinic in June 1970 and complain about pain in your chest and back? Is that your testimony, sir?

A I said not to the back.

Q You did not then tell them at Houston Street that you had had pain in your chest and back since January 1970, six months earlier; is that right?

THE COURT: The witness does not answer, the record should show.

MR. STEARNS: Your Honor, at this time I offer in evidence the second page at this time --

THE COURT: Isn't it in evidence? If it is in evdience, you can read any part of it you want to read.

MR. STEARNS: What are your dates, counselor?

THE COURT: Any page you want to read you may read

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to the jury now.

MR. STEARNS: He offered subsequent records. These are prior to the accident. His records are not complete.

THE COURT: You can offer yours if you want to.

MR. STEARNS: I offer at this time my records.

THE COURT: That will be marked. Any objection?

MR. GOLDSTEIN: May I see them?

THE COURT: All right. Mark it for identification, and then show it to Mr. Goldstein.

(Defendant's Exhibit C was marked for identification.)

xxx

THE COURT: Is it certified, counselor?

MR. STEARNS: Yes, sir.

THE COURT: Defendant's Exhibit C.

Which hospital is this, again, counselor?

MR. STEARNS: United States Public Health Service, outpatient clinic, at Houston Street, New York City.

THE COURT: All right.

THE WITNESS: Excuse me, your Honor, could I ask a question?

THE COURT: No, you answer questions.

THE WITNESS: Could I ask my lawyer? I misunderstand a word.

THE COURT: What word?

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THE WITNESS: "Prior" means after or before?

THE COURT: Before.

THE WITNESS: Before.

THE COURT: If you don't understand a question because of the words, please tell us at any time. This is partly because of this language problem.

Any objection, counselor?

MR. GOLDSTEIN: No, sir.

THE COURT: Mark it in evidence, Mr. Clerk, and you may read any portion that is in evidence.

xx (Defendant's Exhibit C was received in evidence.)

MR. GOLDSTEIN: Judge, I understand that that was marked in evidence for the first page?

THE COURT: I did not understand so. He offered the entire report.

MR. GOLDSTEIN: Oh, if your Honor please, may I see th-se things?

THE COURT: All right. It is certified. I don't know what objection you could have.

MR. STEARNS: For the time being, may I just read this one page, and then I will give it back --

THE COURT: He is willing to confine his reading now to the one page.

MR. GOLDSTEIN: Fine.

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THE COURT: Does that satisfy you for the present at least?

MR. STEARNS: "Walk-in general clinic, June 17, 1970.

"Weight. 194 1/2.

"Blood pressure. 130/90.

"Pulse. 64." That is "P", 64. "T 97.8.

"Pains in chest and back since January 1970."

Q Does that refresh your recollection of a trip you made to the Houston Street clinic in 1970, and at that time, sir, in June 1970 did you complain about pain in your chest?

A If you have the records, that's true.

Q What is your recollection?

A My recollection is yes.

THE COURT: Yours is the same as the record; is that so?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q You were doing this butterworthing beginning at 6 o'clock on June 8, 1971; is that right?

A Yes, sir.

Q Butterworthing is cleaning tanks; right?

A Yes, sir.

Q And the tanks are under deck of a large cargo ship

carrying oil or grain, is that right?

A That's right.

Q And these tanks are large compartments, are they not?

A Yes.

Q The butterworthing is done from a place on top of the tanks, isn't that so?

A Yes, sir.

Q So the workmen, the members of the crew, are on the main deck of the ship, and they were working to clean these tanks that are underneath the deck.

A Yes, sir.

Q They use machinery to do this cleaning, isn't that so?

A That's what they did.

Q The cleaning consists of shooting water into the tanks. Isn't that right?

A Yes, sir, through the machine.

Q To flush out the tanks. Is that so?

A Yes, sir.

Q These tanks are quite large tanks, are they not?

MR. GOLDSTEIN: Objection to the words "quite large."

Q They are large tanks, are they not?

MR. GOLDSTEIN: I don't know what that word means, Judge. It is a relative term.

Q How deep are these tanks? I believe you said 35 to 40 feet?

A Deep.

Q Deep, all right.

A All of them. I don't mean only one.

Q Is it your impression that they are approximately that wide?

A Maybe not.

THE COURT: I don't think he understands your question.

Q How big, can you say, can you estimate even in general terms how big these tanks might be, the tanks that you were cleaning, starting with the No. 6 and No. 7?

A I didn't go inside there so I can't say.

THE COURT: Well, you saw them, didn't you?

THE WITNESS: I did not go inside, sir.

THE COURT: Did you see the tanks anywhere? Did you look into them?

THE WITNESS: They are below the deck.

THE COURT: Did you look into the tanks?

THE WITNESS: I looked, yes, but let's say --

THE COURT: Can't you tell the approximate --

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THE WITNESS: Let's say half of this room.

THE COURT: Can't you tell the approximate size, then?

Q Now --

THE COURT: Let him try to answer this, if he can.

Q Can you give the approximate size of these tanks, Mr. Porss?

A Let's say half of this room or three-quarters.

THE COURT: About half the size of this courtroom?

THE WITNESS: Yes, sir.

Q They are cleaned by means of machinery, and the machinery is led into the tank by means of holes on deck; is that so?

A By the line.

Q I am talking about how you get whatever washes these tanks into the tanks. How do you do it?

A You are talking about this hosing machine?

Q I understand about the hosing machine. The hosing machine goes down into the tank, does it not?

A Yes.

Q What does it go down into the tank through?

A This hole in the deck.

Q Referring to Plaintiff's Exhibit 1, you have circled such a hole on the deck; is that right?

A It's approximately that size. I don't say that this is it, but that size.

Q Mr. Porss, is this a fair and reasonable representation of the holes on the deck of the ship as it was on June 8, 1971?

A Repeat that, please?

Q Is that a fair and reasonable representation of the holes on the deck of this ship as they were on June 8, 1971?

THE COURT: Do you understand the question? I don't think he does.

Q Look at the picture, look at the picture, sir.

A Yes.

Q Now compare the picture.

A You are saying the hole?

THE COURT: Listen to the question.

A I am not saying that the hole --

THE COURT: Just wait until the lawyer asks you the question. Don't interrupt him.

Q Take a look at the picture.

A Yes.

Q Plaintiff's Exhibit 1. Look at that picture, and particularly at the area you have circled. Compare what you see now with what you remember of the condition of the deck

of that ship on June 8, 1971. Does it look the same?

A It looks like a ship deck to me, that's all.

Q Does it look like one of the holes that you were using to drop a machine into the tank to do the cleaning?

A Oh, I can't say that on the picture. Please.

Q All right, then. If you can't say that, what difference do you see? What difference can you tell us about, between the hole depicted on this picture, which I have circled, and the hole that you remember on the ship?

A This hole, that it's a little rim around it, you know, a little bit higher, not flat like this, but about this size.

Q You see, sir, in the area that you have circled a little rim slightly over the deck?

A Yes.

Q That appears in this photograph?

A Yes.

Q Tell me this --

A This could be it.

Q You used any number of these holes, did you not, as a portal or as an opening to put the machines through before this alleged accident of yours; isn't that so?

A Yes.

Q Did these holes that you used at various tanks, beginning with the 6 and 7 tank, correspond, for the jury's

edification, to the pictures? Is this what it looked like?

A What can I say? This looks like a tanker ship.

THE COURT: You can answer the question if you think about it.

THE WITNESS: Yes, it does look like it. Yes.

THE COURT: All right, he says it looks like it.

Q How many holes were there to each tank you were cleaning?

A How many holes?

Q Yes.

A We had one hold.

Q Holes, h-o-l-e-s, holes, how many butterworth holes were there?

A I don't know exactly, but about eight on one side. Is that fair enough? Eight. ten.

Q When you started at 6 o'clock or thereabouts butterworthing the 6 or 7 tank, how many machines were you using?

A We were using one.

Q One at a time?

A Yes, sir.

Q Only one per tank.

A Yes, sir.

Q What was the procedure? To drop the machine into

the hole, let it -- the hole, again, run for a period of time, and then lower it? Is that the procedure?

A Yes, sir.

Q And let it go all the way down, is that right?

A All the way down, as long as that hose was.

Q Then you would bring the hose back up, isn't that so?

A Yes, sir.

Q Would you then go to the next butterworth hole in this same tank and repeat the process?

A I don't think it's the same tank, the other hose.

Q You said there were eight butterworth openings per tank.

A It could be. Inboard and outboard hole, but be one tank, but I am not saying --

THE COURT: Will you please listen to the lawyer and not interrupt him. You break in and he has to start all over again.

Q These plates are on the deck of the ship for exactly the same purpose, all eight of them, to let members of the crew drop these machines down into the tanks so they can go to work. Isn't that so?

A Pardon me?

Q You don't understand that? All eight of these

plates over this tank are for the same purpose, so that you take the plate off and drop the machine in. Isn't that so?

A They have covers.

Q Right. You take the cover off, you drop the machine in; right?

A Yes.

Q You say, if I understand your testimony, that this tank, although it had eight openings, was only cleaned through one of these butterworth plates. Is that your testimony? And then you moved on to another one?

A I didn't say we cleaned eight.

Q We are talking about the number of butterworth plates there were per tank, sir. I believe you said eight.

A Eight on one side, back of the general area we are talking about, aft of the midship house on the port side.

Q How many per tank?

A I don't know exactly, but I think there are two, two holes for a tank.

Q Two holes per tank, not eight; is that right?

A Pardon?

Q I say there were two holes per tank, not eight; is that what you are saying?

A No, sir -- yes, yes.

Q You started at the No. 6. You are sure you only

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had one machine going?

A As far as I know, only one that I handled.

Q That you handled?

A Us, you know, when I worked on it.

Q So three men were just doing one machine, is that right?

A Yes, sir.

Q So that means that the three of you would set the machine through the hole, drop it down the prescribed distance or the proper distance, let the machine run, and stand around and wait; is that right?

A Yes, sir.

Q And then you would let it go down another few feet, is that right?

A Yes, sir.

Q Let it wait, and so on, and most of the time you would be standing around, isn't that so?

A Yes, sir.

Q And then the time would come when you would have to take this machine back out, isn't that right?

A That's right.

Q How many times did you do that? How many times did you lift the machine out of the tank before the time when you say that you got hurt?

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A I am not sure whether it was two or three times.

Q On those occasions whom were you working with during that time, on these two or three other occasions?

A We started with four men.

THE COURT: He said who. Do you understand the question? He didn't ask you how many.

A Schmidt, Frank, me --

Q During the time that this machine was in the tank, and just before, now, before you first took one of these out, was there water running through the line?

A Through the line, no, sir.

Q No, before, before everything was turned off, was there water running through the line? I am asking you to give us the idea of this butterworthing, what was really going on there. Just before you turned everything off to begin to take this thing out, what had been happening inside of the tank?

A The machine was spreading water.

Q You have got a line, a hose, tied up to a hydrant on the deck of the ship, is that right?

A That's right.

Q And this hydrant was on a line running from the bow back aft, isn't that right, and it had various connectors, isn't that so?

A That's right. The hose was attached to that.

Q What?

A The hose was attached.

Q Yes, to the connections. The hose, and the hose ran across to the butterworth plate where you were working, isn't that right?

A Yes.

Q When the machine was put down into the tank, the water was turned on, isn't that right?

A Yes, sir.

Q And the machine began to wash the insi-e of the tank.

A That's right.

Q This machine had some kind of device that was able to throw the water in all directions inside the tank?

A Yes, sir.

Q You saw this device, is that right?

A I saw the general construction of the machine.

Q You handled it, you looked at it, you picked it up, beginning at 6 o'clock on numerous occasions, you say at least two or three; is that right?

A Yes, sir.

Q What did this machine that is capable of throwing water throughout the tank look like?

A It's a metal object, about 16 by 18 inches all around.

Q 16 by 18.

A Something like that.

Q It could be less, could it? Could it be less, sir?

A Something like this.

Q What do you estimate that distance is?

A 14.

Q Could it be smaller?

A 14, all right.

Q It is not just a solid piece. It has arms to it, does it not?

A Could be.

Q Well, not could be, sir. You remember it.

A I don't remember it exactly what it looked like.

Q You don't remember exactly what it looked like.

A No, sir.

Q Do you remember the principle on which it operated? Ever seen a garden sprinkler?

A No, sir -- yes, sir, I have.

Q Something that shoots water around and around and around? Did this machine have some kind of rotating piece to it?

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A I don't exactly remember. It's possible. It was spreading water around.

Q Do you know or can you remember what part of this machine, butterworth, so-called butterworth machine, cast or threw the water around inside the tank? Can you remember?

A What part?

Q What part.

A What part of the machine?

Q Yes. Threw the water around?

A All I can know is that the machine was working.

Q I am not talking about when it was working; I am talking about when you had it in your hands, when you were standing within a foot of it up on the deck. What did it look like?

A A metal object.

Q A metal object, 16 by 18?

A Something like that.

Q What else did it have? Was it square, round?

A Not all the way aro-nd, no. Square sides a little bit.

Q Did it have an arm on either end of a circular thing? Did it have that, something like a propeller that spun around?

A I don't remember exactly what it looks like, exactly.

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Q You say that it weighs how much?

A I said between -- with the hose, the machine, and the water in it, between 300 and 500 pounds.

THE COURT: How much?

MR. STEARNS: 300 to 500 pounds.

Q Do you have an opinion as to what the machine alone weighs? How much did the machine alone weigh, sir?

A I think it is around a hundred poudsn, 75 pounds.

Q Could it be less than 75?

A I don't know. I never weighed it.

Q Do you remember attending at a deposition on August 16, 1972, at the offices of Messrs. Wilson and Hopkins, who were then attorneys for the defendant, and being asked questions and giving certain answers?

A I remember.

Q Do you remember, then, these answers to these questions, on page 10, line 14:

"Question: What were you doing?

"Answer: We were butterworthing, cleaning tanks.

"Question: What does that mean?

"Answer: Cleaning tanks, you know, with a machine.

"Question: Can you describe the machine to me?

"Answer: It is a metal object attached -- metal object machine attached to the hose.

"Question: What does it look like? Is it round?

"Answer: Yes, it is like this. Round.

"Question: And the witness is describing an oval-shaped object. Is that correct, Mr. Goldstein?

"Mr. Goldstein: It seems to be.

"Question: About a foot in length and about 8 inches in its short diameter, something like this.

"Answer: I think it is bigger than that.

"Question: Made of metal?

"Answer: Yes.

"Question: Is it solid or it has holes in it?

"Answer: Well, it spreads water around in the tank.

"Question: Is it supposed to splash water around inside the tanks of the vessel?

"Answer: Yes.

"Question: And how much does this, does that metal object weigh, do you know, or did that metal object weigh that you were working with that night, do you know?

"Answer: It was about four, five hundred pounds, with a hose.

"Question: No. Just it itself. How much would you say it weighed?

"Answer: I don't know.

"Question: What is your best estimate?

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"Answer: Oh, maybe 300 pounds, 250, something like that. I don't know, I can't, I don't know."

Do you remember those questions, sir?

A Yes, sir.

Q Do you remember those answers?

A Yes, sir.

Q It is true, then, is it not, that your opinion of that machine in 1972, at the time of the deposition, was that it weighed somewhere between 250 and 300 pounds?

A I didn't mean the machine alone. Now, this questioning goes into the hose and the machine and everything. That is the way I understood it.

Q All right, fine. Did this thing have some kind of rotater arm on it?

A I don't know.

Q You don't remember.

A I don't know. Absolutely I don't know. I can't swear to everything what it exactly looks like.

Q Did you ever know what it looked like, sir?

A Pardon me?

Q I mean, you saw these things,you handled them in June 1971, isn't that right?

A Right.

Q You knew that they splashed water around in the

tank; is that right?

A Yes, sir.

Q You have seen lawn sprinklers?

A Yes, sir.

Q Have you not?

A Yes, sir.

Q As of June 1971 you had seen lawn sprinklers, had you not?

A Yes, I had.

Q And you understood, at least vaguely, if not better, how a lawn sprinkler works?

A All kinds of spinning.

Q Spinning caused by the water pressure in the hose, isn't that right?

A Yes.

Q It makes a head with arms swinging around, isn't that so?

A You know more than I.

Q Did you know that and do you know that now?

A I didn't know which way or how it works, but I can figure it out, the force of the water makes the machine work.

Q It is your testimony now that you can remember nothing about this machine other than it was 16 by 18 inches;

is that right?

A Yes, sir, somewhere around there.

Q Is it your testimony now that you cannot even say whether there were holes in it?

A I mean, how else could water come out?

THE COURT: No, don't ask him questions. You answer questions.

A I testified there was holes in it. I still say there were holes in it.

Q Is that all you can say? I mean, to help this jury understand, is it all you can say, to say that it was 16 by 18 inches and had holes in it?

A Look, can I answer no more of this? I don't know exactly --

THE COURT: This is getting on very tender grounds, counselor, when your client says he isn't going to answer questions.

MR. GOLDSTEIN: I think the question has been asked about five times and he has answered it.

THE COURT: I have not heard an objection from you, counselor.

MR. GOLDSTEIN: If your Honor please, I am objecting now.

THE COURT: Well, you object rather late. The

questions have been now answered. I am not going to take post-mortem objections.

MR. GOLDSTEIN: That is the point. They have all been answered already, four and five times.

MR. STEARNS: Your Honor, there is one other question that I would like to ask.

THE COURT: All right.

MR. STEARNS: I am now going to ask Mr. Porss whether in his own language, in his own words, he can say anything to communicate to the jury anything further about the physical appearance of this butterworth machine.

MR. GOLDSTEIN: Objection.

THE COURT: Overruled. It is a proper question, counsel.

MR. GOLDSTEIN: I object on the ground that this question in its various forms has been asked over and over and over again. Mr. Stearns did not ask all of the questions that I did.

THE COURT: I am going to overrule it, and one of the reasons is that your client said he wasn't going to answer any more questions.

MR. GOLDSTEIN: He is tired of answering the same thing over and over again. I don't blame him.

THE COURT: That is no reason.

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MR. GOLDSTEIN: I am tired of hearing the same question and answer.

THE COURT: The objection is not sustained.

You may answer now, Mr. Porss.

MR. GOLDSTEIN: Mr. Porss, answer again, once more.

THE WITNESS: What was the question? I forgot.

THE COURT: You I think heard it, but I will have the reporter read it.

(Question read)

THE COURT: Answer the question.

THE WITNESS: I have answered that. I said yes.

THE COURT: All right, he says yes.

Q Would it help you, sir, to see a picture of a butterworth machine? Would that refresh your recollection? Would it?

A Well, if I may see it, I will tell you exactly what I think.

THE COURT: That is what he is asking you.

Q Referring to Plaintiff's Exhibit 1-E in evidence, sir.

I am going to circle something.

MR. GOLDSTEIN: Will the record indicate that Mr. Stearns has circled something.

MR. STEARNS: On 1-E.

MR. GOLDSTEIN: On 1-E.

THE COURT: You may see it if you wish.

MR. GOLDSTEIN: May we find out what he circled?

THE COURT: You may look at it. I don't know what more you can do.

MR. GOLDSTEIN: I would like to put it on the record so the record shows.

THE COURT: Where it is?

MR. GOLDSTEIN: Yes. If you --

THE COURT: This has to be a two-way street. If you and Mr. Stearn agree, of course.

MR. STEARNS: Your Honor, may I have nothing on the record that is going to suggest anything to anybody.

MR. GOLDSTEIN: Mr. Stearns, did you mark a photograph? May we find out where you marked it?

MR. STEARNS: This is in evidence. The area I have circled is part of the record, because it is a change, a physical change on an exhibit part of this record. No recitation is needed.

MR. GOLDSTEIN: May I have the help from the Court, since I obviously cannot get it from Mr. Stearns.

THE COURT: I don't think you need any help from this Court. I am going to sustain the objection. It is his witness; it is his examination. You have a right to

examine this witness again on redirect. That is all that is necessary.

MR. GOLDSTEIN: If your Honor please --

THE COURT: That is all the right you have, counsel.

MR. GOLDSTEIN: The witness did not circle this. Mr. Stearns circled it.

THE COURT: That does not make any difference. You have seen it. That is all now.

MR. GOLDSTEIN: And the record is totally blank as to what Mr. Stearns did?

THE COURT: It is as blank as it may be, but that makes no difference. I have told you what --

MR. GOLDSTEIN: It may make a difference to the Circuit Court, Judge.

THE COURT: Well, I am not concerned about the Circuit Court or that threat either. I have told you what your rights are, and that is all there is to it.

Go on, Mr. Stearns, it is your case -- I mean, it is your examination now, not Mr. Goldstein's.

Q Now referring to Plaintiff's Exhibit 1-E, the area encircled with blue ink, what is that object in the circle on the end of the hose?

A This could be the machine we are talking about.

Q Ah, it could be?

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A It could be also a nozzle --

MR. GOLDSTEIN: If your Honor please, can we avoid having Mr. Stearns saying "Ah, it could be," as though it came down from Mount Sinai itself? That is absolutely improper.

THE COURT: That may be a good place for it come down from.

MR. GOLDSTEIN: It is absolutely improper. Your Honor allows it. Your Honor allows him to get away with it. Why should that be?

THE COURT: You may disregard comments by Mr. Goldstein.

MR. GOLDSTEIN: If they can be asked to disregard comments from Mr. Stearns, they can disregard them from me also.

THE COURT: He has not made any comments now. I will say the same thing to him. You are out of order.

MR. GOLDSTEIN: When?

THE COURT: I have said it today.

All right, go on, Mr. Stearns.

Q Mr. Porss, did you say in your direct examination, when confronted with this very photograph, 1_E, in response to a question by Mr. Goldstein that the butterworth machine did not appear in the picture -- you said that?

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A Because I don't know exactly what it looked like. OK?

Q And you said, did you not, that this is the part --

A I did say that, yes, sir.

Q This is another question.

A I can't yeny it. I did say it.

Q You did say, did you not --

A Yes, sir, I did.

Q -- that this was the part to which the machine was later attached. Isn't that so?

A What part?

Q That this part circled was the part to which the machine was later attached. Did you or did you not say that?

A I said at the end of the hose.

MR. GOLDSTEIN: Your Honor, I have about four objections. No. 1, will your Honor direct Mr. Stearns to stop leaning over the plaintiff and shouting in his ear?

THE COURT: Yes, and I will also direct the plaintiff not to interrupt Mr. Stearns' questions.

MR. GOLDSTEIN: I object to the form of the question on the grounds that we are beating an absolutely dead animal. Mr. Porss has stated over and over again that he did not know exactly what the thing looked like, he didn't recall it that well, he didn't see it in the photograph when

he looked for it before.

All right, Mr. Stearns has made his point. It is in the photograph. Can we go on from that point or should we waste the entire afternoon determining --

THE COURT: Your objection is overruled.

MR. GOLDSTEIN: -- whether or not Mr. Porss knew what the machine looked like.

THE COURT: Your objection is overruled.

MR. GOLDSTEIN: Is this lawsuit dependent upon whether Mr. Porss knew what the machine looked like?

THE COURT: I am not here to answer your questions, counselor. I am not going to bite on that one. You are here to --

MR. GOLDSTEIN: To try a lawsuit, sir.

THE COURT: Yes, that is right.

MR. GOLDSTEIN: Right.

THE COURT: And you are here to obey the customary rules of the court on evidentiary matters.

Now proceed.

MR. GOLDSTEIN: May I object to the question?

THE COURT: Wait.

MR. GOLDSTEIN: May I object when a question is asked four and five times?

THE COURT: Yes, you may.

MR. GOLDSTEIN: Is that a reasonable objection?

THE COURT: You have objected. You have objected. I don't want any more comments.

You may continue your cross-examination, sir. Maybe you can complete it soon.

MR. STEARNS: Yes.

First of all, may I show to the jury what has been circled?

THE COURT: Yes.

Q To make sure that everybody understands, Mr. Porss, would you refer to 1-E and to 1-D, and tell me whether or not the procedure that you are talking about involves sticking this machine, now circled in blue, attached to the hose through the hole or a similar hole, such as is depicted in Plaintiff's Exhibit 1.

A What do you want me to say now?

THE COURT: He is not telling you what to say. He is asking you a question. Now let us understand that.

Read the question, please.

(Question read)

Q Do you understand the question? Mr. Porss, do you understand the question?

A Yes, sir. But I am not sure about this.

Q So this jury will understand, what is now circled

in blue by me is what, with the hose connected to it, is dropped into the tank; is that so?

A Yes, sir.

Q And it is dropped into the tank through the hole that is depicted in Plaintiff's Exhibit 1, on the deck of the ship. Isn't that so?

A I am not saying this is the hole.

Q We are not saying that that is the hole of the No. 3 tank.

A It is the size.

Q It is the size. It looks like all of these holes are the same, these butterworth holes are the same size; isn't that true?

A Yes, sir.

Q After these first two tanks were done, on each occasion you had to remove the machine from inside the tank, isn't that so?

A Yes, sir.

Q That meant you had to pull it up through the hole that you put it down through, isn't that so?

A Yes, sir.

Q Three men were doing this. We are talking about either 6 or 7, the first one you handled. Is that two, three men?

A First, when we started first?

Q On No. 6 tank or 7, whichever you started first. Three men doing the job?

A We all started, four of us.

Q The bosun is in charge, is that right?

A Yes, sir.

Q And you are an AB, able-bodied seaman?

A Yes, sir.

Q And Schmidt was an AB?

A Yes.

Q Isn't that right?

A Yes.

Q And Frank was a deck maintenance man. Isn't that so?

A Yes, sir.

Q And you were all working overtime?

A Yes, sir.

Q The bosun is in charge, isn't that right?

A Yes, sir.

Q He tells you what to do, when to do it?

A He tells everybody on the deck.

Q And you as an AB, in your relation to these other two men, Schmidt and Frank, you were on the same footing, they couldn't tell you what to do just as you couldn't tell

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them what to do; isn't that so?

A No, he can't tell me if I don't want to do it. He can ask me for help.

Q He has no authority over you?

A No, sir.

Q And you none over him.

A No, sir.

THE COURT: He says no, sir.

Q How was this first machine lifted up out of the tank, the No. 6 or 7, whichever one you handled first?

A How?

Q Yes.

A Or how many men?

Q How?

THE COURT: How was it lifted?

A One man in the middle, one on the line, I was on the hose and bosun was in back of me. When we pulled, the hose came up. We put the hose in back of me.

Q You say that when this No. 6 was taken up, the machine in No. 6, the bosun would stand behind you and clear the hose as you pulled it up out of your way; is that right?

A First hole I am talking about.

Q Yes. So that you would not trip if you stepped

backwards; isn't that so?

A It helps if somebody else is behind at the hose.

Q You are just kind of flicking this hose out of the way, isn't that so?

A What do you mean by flicking?

Q Well --

A You have to push it out. It's not easy. It's a rubber hose.

Q All right, let us get the procedure. This is the first time. Who is the man in the middle on the first machine?

A Schmidt.

Q So Mr. Schmidt is standing between you and -- who?

A Frank.

Q Frank. Whose last name was Wherrity, isn't that so?

A I don't know his last name.

Q In fact, he was a deck maintenance man, wasn't he?

A He was deck maintenance, that I know.

Q You are standing in line, all facing in the same direction. Isn't that right?

A What do you mean on line?

Q You are standing side by side.

A Not exactly. I am a little -- the man on the hose

is a little bit behind the middle man. But I say Frank or anybody else who was on the line, he is left, at least left of Schmidt.

Q It depends upon which way Schmidt is facing?

A Well, he was on his left, no matter which way.

Q In any event, the three of you are standing right next to each other; isn't that so?

A Approximately, yes.

Q How far? How far, on the No. 6 tank how far were you standing away from Schmidt?

A Well, the hole is, like I said, about 14, 18 inches, something like that. Well, we were all around it. When we grab the line, the hose, how far can we be apart? A couple of feet, something like that.

Q With this hole, all of you standing very close together, a couple of eet, a man standing right at the hole and over it is Schmidt, the so-called middle man; right?

A He was a little taller than I.

Q How old was he?

A How old?

Q About 60, wasn't he?

A Yes. I don't know his age.

Q Elderly fellow?

A Older than I am.

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Q Would you say he was about 60 years old?

A Probably. Could be.

Q Was he a slender man, slight, thin of bui d?

A Yes. He was not husky. He was, you know, muscular then.

Q He is over the hole, the man with the line is to his right, Frank and you are to his left?

A He was on the left. No, I was to the right.

Q All right. Here is Schmidt over the hole -- indicate I have turned around facing the other way -- you on the right, Wherrity is on the left. There is the No. 6 tank. What happened then? How did he get the hose out or machine out of the tank?

A Well, the middle man, he grabs, let's say, close to the deck, the hose and the line, and then we grab the hose, and the other guy on the line a little higher up, and then we all pull together.

Q This line that you are talking about is a line similar to the line shown in Plaintiff's Exhibit 1-E and 1-F, a manila line, a rope. Isn't that so?

A It's approximately the right size.

Q What are the dimensions of the rope? What was the dimension of the rope --

THE COURT: The length or the thickness, counselor?

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Q Thickness. What was the thickness of the rope?

A Maybe half an inch, three-quarter.

MR. STEARNS: May I show this to the jury?

THE COURT: Yes.

Q Mr. Porss, to go back to what you were doing, then, to get this machine out of the tank: You are on Schmidt's right, Wherrity is on his left. Schmidt bends down and grabs both, both the hose and the line, the rope.

A That's right.

Q He picks them both up simultaneously, at the same time; right?

A Yes.

Q You to the right have got the hose in both hands. Isn't that right?

A That's right.

Q And you are pulling it as he is pulling it; is that right?

A Well, yes, I bend over and grab the line and then we all pull together.

Q You are pulling it as he is pulling it; is that right?

A Yes, sir.

Q On the other side Wherrity is doing the same thing with the rope. As Schmidt pulls up on the rope, he pulls on

the rope?

A He has to pull on the rope. As soon as it gets up, he has to step on it. That is his main job.

Q Sir, his main job is to step on the rope. OK. So you are all standing a couple of feet apart, right, Schmidt in hte middle. You are pulling, Schmidt is lifting and pulling.

Now, Wherrity is on your left, Schmidt is between you and Wherrity. Are you watching him?

A Who are you talking about? Schmidt are you talking about?

Q Wherrity. Are you watching what Wherrity is doing?

A Well, I can't actually see, because Schmidt is in -- but this job, you know, has to be absolutely perfect altogether.

THE COURT: Just answer his questions. Nobody asked you that question.

Q Are you saying, Mr. Porss, that Wherrity, to do this job, to hold this half inch, three-quarter inch manila line and pull it hand over hand as he was doing, somehow had to step on it?

A Every time we have a pull, he has to step on it, to hold him, hold the machine from falling down.

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Q Mr. Porss, in this method that you are describing, this thing that you were doing, not only at the 6 tank but at the 7 tank and then later when you say you got hurt, the three of you are cooperatively together lifting this thing out of the tank; isn't that right?

A Yes, sir.

Q So that each of you is bearing a portion of the weight. Isn't that right?

A That's correct.

Q In the lifting cycle, this slender man, nearly 60 years old, Mr. Schmidt, reaches down with two hands, one on the hose, one on the rope, and lifts. When he does that, you with the hose pull and Frank with the rope pulls. So that he is not lifting the whole thing, isn't that right?

A Who?

Q Schmidt.

A Schmidt, no, not all of it.

Q Because you are pulling, you are pulling hard.

A Everybody helps, yes.

Q Right. You are pulling hard, Wherrity is pulling hard. At that point you have your hand on the hose, Wherrity has his hand on the rope. Schmidt has drawn his hands up as high as they can go.

A That's right.

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Q He lets go?

A Right.

Q Back down, right?

A Right.

Q Continuous operation?

A Right.

Q As he goes down and lifts, you again pull; is that right?

A That's right.

Q And you are passing this through your hands, pulling all the time. Right?

A Yes.

Q And Frank is doing the same thing; right?

A Well, he has got more responsibility to make sure he steps it from falling down, but he does help, you know, I don't know how much, but he does help to pull it through.

Q Well, he is a little bit distracted because at the time he is pulling he has got to be stepping on this rope, you say. Isn't that right?

A I am saying when we are all pulling and we get to the point we can't go any further, he has to immediately step on the rope.

Q Why does he immediately have to step on the rope?

A That's what happens, because the machine is going

to fall down, somebody get hurt.

Q Sir, how much do you weigh?

A Now?

Q Yes.

A 190.

Q How tall are you?

A Five seven.

MR. GOLDSTEIN: Your Honor, this is getting argumentative. I object to this question.

THE COURT: Overruled, counselor.

Q You are five seven, you weigh 195 pounds. On June 8, 1971, you were what, 41?

A I don't know.

THE COURT: How old were you?

Q 43, I guess.

A I am 46 now.

Q So you were either 42 or 43 then.

A I am 46 now.

Q You are pulling on this hose. Wherrity is pulling on the other; right? The rope. Was it necessary for you to step on the hose as you pull it?

A Pardon me?

Q Was it necessary for you to step on the hose?

A No, no.

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Q Why in the world, then, was it necessary for Wherrity to step on the rope? He had it in his hands, didn't he?

A One man cannot hold the whole thing up by himself, rope or a hose. When --

Q You are saying --

MR. GOLDSTEIN: Let him finish, if you please.

Q Go ahead. I am sorry.

A Why does he have to step on the rope? I have been telling you a thousand times already he is going to stop the machine in the hole from falling down in the tank again, into the bottom.

Q Wherrity has got this thing and it is like --

A I don't know how he has it.

THE COURT: Listen to his question.

Q Listen. He is pulling this thing, tug-a-war, right? He has got tension, he has got tension in his right hand, some tension in his left hand?

A I don't know.

Q And there is slack down to the deck, isn't that right?

A He gets slack, yes.

Q Now --

A And he has no --

Q He is not --

MR. GOLDSTEIN: I missed those last two or three words; I don't know what they were.

THE COURT: You can have the record read if you want.

MR. GOLDSTEIN: Well, I would appreciate it.

THE COURT: Let the record be read.

MR. GOLDSTEIN: I would appreciate Mr. Stearns' finish.

THE COURT: You must let the witness complete his answer, counselor.

(Record read)

Q "And he has no" -- you wanted to say something from there? "And he has no" -- finish your answer, if you didn't.

THE COURT: You might take the next question.

Q All right, he is pulling as you, this rope, through his hands, as you are pulling the rope through your hands, and you want him to step on the slack line, that that is very important. Is that what you are saying?

MR. GOLDSTEIN: If your Honor please, I object to the form of the question. It isn't what Mr. Porss wants him to do; it is what Mr. Porss says is supposed to be done.

THE COURT: Sustained in that form, sir.

Q You are saying that what was required of these

men, and particularly Frank, was that while he was pulling this thing through his hands, hand over hand, and creating slack with his left hand here, if he had it in the posture with his right hand forward, that somehow while doing this it was necessary for him to step on the slack end of the rope; is that the proper procedure?

A Yes.

Q And why was it necessary for him to step onto this slack end of the rope?

A What you mean slack end? I am talking about he steps on that rope so that the hose and the machine cannot fall down again.

Q I understand you now, sir.

A I am not talking about the slack end of the rope.

Q This is a continuous process, isn't that right? Everybody is lifting, everybody is pulling, you are pulling it through your hands. He puts his foot on the rope and lets go with his hands, so that trh machine won't fall back in. Is that what you are saying?

A Frank don't let go the rope. He steps on it, he holds on it. That is what we call an anchor man on a butterworth.

Q You said that Mr. Schmidt was the anchor man, didn't you? The man in the middle was the anchor man?

A When did I say that?

Q On direct examination.

A I don't remember saying that.

Q Now, Mr. Porss --

THE COURT: I wish you would endeavor to arrive at a conclusion of this cross-examination.

MR. STEARNS: Sir, I am just now getting on to a description of the accident.

THE COURT: I know what you are about, that is, what the general purpose is.

Q After you had gone from 6 to 7 and handled these two or three machines, you went to another tank; right?

A That's right.

Q And you carried this machine with you?

A That's right.

Q How far did you have to go?

A 15, 20 feet, something like that. All depends where you shift to.

Q Did you carry the head end of it? Did you carry the machine or did you carry the hose or what did you do?

A We never unhooked the --

THE COURT: No, no, what did you do? is the question. Nothing else.

Q You did not unhook the hose. You left it on the

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line, but you picked up the end of the hose with the butterworth machine on it and you walked it over to --

A Two men would take --

Q Two men would pick up the machine?

A Yes, and dragged it over. How's that?

Q You did not drag it; it is a valuable piece of machinery, isn't it?

A Well, we didn't lift it too high up, you know, and went.

Q And carried it.

A Carried it.

Q And you put it back into this tank, and the process began again. Isn't that so?

A Yes, sir.

Q The machine goes all the way down in stages, is that right?

A Yes.

Q Did that happen before this alleged accident of yours, that you put the machine all the way down in stages?

A Yes sir, we did, like I specified before, two or three holes before.

Q At that time as you were lowering this in stages, was the bosun present?

A Well, bosun was there at first, later on he was

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gone. He was busy with the chief mate and chief pumpman was on the deck.

Q You can remember all these things, just before --

A I know they are on the deck, they had to be.

Q Before your alleged accident, sir, before 9:20 or 9:30, 9:30, 9:20, you could see that the bosun was talking to the pumpman?

A Pardon?

Q I say, is it your testimony that, as you said --

A I said that --

THE COURT: Will you listen to his question?

THE WITNESS: Well, he asked me a question.

Q Is it your testimony as you sit here that you could remember that in the evening of June 8, 1971, before this accident you claim, that you saw the bosun on deck talking to the chief pumpman?

A I didn't say he was talking to him.

Q With the chief pumpman?

A I presume he was going and was busy with the chief mate and the chief pumpman or second pumpman, whoever was on duty.

Q You presume that.

A He was gone; let's say it that way.

Q Do you remember what period of time he was gone?

A No, I don't remember exact times.

Q Or how much out of the entire evening he was gone?

A He was gone maybe half of the time we were working at that.

Q Wasn't it necessary when you were shifting these machines to turn off the water lines?

A Oh, yes, sir.

Q You did not disconnect the machine, did you?

A Sometimes when you have to shift the hose over, you disconnect it.

Q I am talking about June 8, 1971. Did you at any time before this alleged accident of yours disconnect the hose at any time?

A It is possible we did.

Q All right. It is quite possible that you had more than one machine working at one time and you were shifting machines all the time, isn't that so?

A We were working with one machine.

Q One machine at a time, but how many machines were working in the area where you and these two or three other men were working?

A One machine.

Q Where would you turn the water off?

THE COURT: Where did you turn the water off?

Q Where did you turn the water off?

A The hose is connected to the water pipe, right? That is where you have a valve and turn it off.

THE COURT: Where is that?

THE WITNESS: It is on the deck of the ship.

Q Approximately the midline of the ship?

A From the picture, I would say.

Q The lines that are shown in Plaintiff's Exhibit 1-F, to which the hose, the rope, and the machine are attached; is that right?

A I say it is exactly the same --

THE COURT: You see, you don't wait until he gets through with his question and it just confuses everything.

Q Is this the line? Is this circular pipe, I should say, the line you are referring to? As a matter of fact, doesn't this picture show these hooked up?

A They have water pipes, where the water pressure is.

Q Aren't these hoses shown to be hooked up to this line?

THE COURT: We are going to take a recess now.

(Recess)

THE COURT: Do you have any more cross, Mr. Stearns?

MR. STEARNS: Yes, sir, I do.

THE COURT: Take it, then.

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Q We are now at the point where you had moved this thing, you had not disconnected it. You were going over the tank where you say that you got hurt. Do you understand where we are now?

A Where we started from?

Q No. I am talking about at a point in time on June 8, 1971, after you had taken care of the 6 and 7 tanks and you were now moving onto another tank. Just so you understand what I am asking you, consider that fact. Now, you turned off the water on the line, isn't that right?

A Yes, sir.

Q Whenever you did that, it was also necessary to open up the so-called bleeder, wasn't that so?

A I think it is on all the time.

Q The bleeder is on all the time.

THE COURT: What is the bleeder?

THE WITNESS: It's another valve that is running, oozing out easily, slowly, just in case somebody turns off the pressure, it's going to come out of there.

Q In fact, sir, isn't it necessary to have maximum pressure on this butterworthing machine for it to operate properly?

A I am not an expert on that. I don't know how much pressure.

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Q Let me ask you a few questions to see what you do know about this.

Bleeder was another valve on the line, on the water line, of this ship as it was in June 1971; isn't that so?

MR. GOLDSTEIN: If your Honor please, may I offer an objection to discussions about bleeder lines. There is no claim here about the bleeder line, we don't know anything about it, we couldn't care less about it. It had nothing to do with picking up --

THE COURT: Maybe the defendant thinks it is important.

MR. GOLDSTEIN: Judge, we are talking about a period of time when they were picking the hose and the line up -- and the machine up out of the hole. At no other time.

MR. STEARNS: Your Honor, I understand that --

THE COURT: Objection overruled for the time being.

Q Can you say what the function of the bleeder was and where was it with relation to where you were working at the time?

A Oh, I don't know exactly where it was, but there is a bleeder on the line.

Q And it was necessary to turn on the bleeder after you shut off the valve on the line to which the hose was connected; isn't that so?

A It is not necessary. That is why we have a bleeder. When you turn off the hose, the pressure on the hose, the bleeder is going to take over.

THE COURT: What is the purpose of the bleeder?

THE WITNESS: So the place won't explode from the pressure, the water pressure.

Q Isn't it a fact that the purpose of the bleeder is to relieve back pressure on the pump, the pump down in the engine room, or do you know that?

A I am not a pumpman, please.

Q As it was, sir, on June 8, 1971, was it necessary when you were turning off the lines to open the bleeder? Was that necessary?

A Was that necessary? Even if we washed the decks and we have water on deck, we have bleeders, just in case somebody shuts off the pressure.

THE COURT: Can you answer his question?

THE WITNESS: That is why we had bleeders on it, just in case somebody shuts off the pressure valve so the water will come out of there. That is a little open, you know.

Q In any event, after the washing of this tank, what you say was the third tank that you were working on, had been completed, it was time again to lift the machine out;

isn't that right?

A Which hole are you talking about?

Q This is the third tank, what you say was the third tank. It was necessary, after this tank had been washed, to remove the machine again; isn't that so?

A Oh, as best as I can remember, I think we moved the hose twice or three times. I don't know exactly.

Q We are talking about the time at the tank where you say that you got hurt.

A After that? Oh, you mean after that we moved, yes.

THE COURT: What is the question with that, counselor?

Q What I am saying is, it was time again --

MR. STEARNS: This is prefatory, your Honor, just to make sure that he understands where he is in the sequence.

Q At the time, on the third tank, you say, it was time again to remove the machine from the tank. Isn't that so? And this was about 9:20, 9:30.

A I don't understand your question clearly.

Q What time did you begin to remove the machine that you were handling when you say that you got hurt?

A You are talking about after I was hurt, what the next tank?

Q No. That tank. When you say that you got hurt.

A I told you before, about two minutes, I was lying on the deck.

Q No. You were removing again this machine from this third tank at the time that you say you got hurt. I am just trying to establish that. Is that what you claim?

A You are talking about the number of the tank where I was hurt at?

Q When you say that you got hurt, were you removing the machine from a tank?

A Yes, sir.

Q Was it the third tank, according to what you say?

A That is what I testified before, sir, the third, I believe it was the third.

Q At that time who was present?

A Schmidt, Frank and me.

Q Who was in charge of the job, the work? The bosun,was he not?

A The bosun was in charge, but he was not there.

Q And the bosun said he went to shut off the machines, did he not?

A Pardon me?

Q The bosun told you he went to shut off the machines, did he not?

A The way it is, the bosun puts us on the job, and

we do the job. He don't have to tell us, you know, "You pick up this" or "you pick up that line."

Q Was the bosun in charge of how long the machines would be allowed to run in the tank?

A The bosun is walking around, like I testified before. When he thinks the time is to lower it again, he will be there, he will tell us what to do, or he is going to tell us ten minutes from now, "You are going to lower it again."

Q Was he there every time something was lowered?

A I don't know if he was there every time.

Q Wasn't he the guy that was timing the job?

A Pardon?

Q Wasn't it he who was timing the job?

A It is up to him, yes.

Q And he told you when it was time to remove the machine too, didn't he?

A He didn't tell me alone. He told us.

Q Right.

A What to do.

Q Then he timed that and he was right there and he told you to bring it up, didn't he?

A Sometimes he was there, sometimes he wasn't there. He told, "At this time you pull it," and that's it.

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He doesn't have to be there. He told us ahead of time.

Q He told you ahead of time. Was he timing the job? I mean, was he the guy saying, "It is time"?

A Yes, he told us, "It is time, you pull it up," or lower, whatever.

Q Who did he tell that to?

A To us.

Q How long before you began lifting it up, did he tell you? Did you hear the question?

A Yes, but I -- what do you want to know? I already told you. He told us everything, what to do. Sometimes he was present,sometimes he wasn't there. He told us when to pick it up or when to lower it.

Q How long before you began to take this up had he been absent from the area?

A He was coming and going, like I said before.

Q So you have no recollection. Is that what you are saying?

THE COURT: In substance that is it. Why don't you take it, counselor? That he was coming and going. That is an answer.

Q And on this third occasion who was the middle man?

A Schmidt.

Q Were you doing the same thing? Were you on the hose?

A Yes, sir.

Q Was Frank handling the line, the rope?

A Yes, sir, he was on the line.

Q You were doing it in the same fashion that you have described; is that so?

A Yes, sir.

Q While you were doing that, while you were holding onto the hose, you claim that you were pulled off your feet; isn't that so?

A That's right. I was pulling the hose.

Q You were pulling the hose. What happened?

A Suddenly I got all the weight and it pull me down on the deck. Everything fell down again.

Q Did these two men, Schmidt -- I mean, what do you claim caused you -- I withdraw the question -- what do you claim caused you to have all the weight of the machine?

A Because they both let go at the same time. Frank did not step on the line to stop it.

Q You say that they both let go at the same time.

A Yes, sir.

Q When they both let go at the same time, you were pulled forward; is that what you are saying?

A It happened so fast, pulled me down on the deck.

THE COURT: You have been all over this, counsel.

Q You hit the deck landing on your knees, is that right?

A Hands and knees.

Q Did you discuss this? Did you say anything to Schmidt or Wherrity?

A Not at that moment, I didn't say anything, except Schmidt said, "Let's try it again," and I didn't say, till later on, when bosun was there, I think he asked me to be the middle man and I told him --

Q Now --

MR. GOLDSTEIN: Now, may the witness --

MR. STEARNS: I object to his finishing with a hearsay answer.

MR. GOLDSTEIN: May the witness please be allowed to answer?

THE COURT: Yes, let him finish his answer.

Finish your answer, sir, if you haven't.

MR. GOLDSTEIN: May we have the last two or three words of the answer, Judge, to give Mr. Porss his train of thought.

THE COURT: You can have the answer read.

(Answer read)

A And I told him I hurt my back before, tonight.

MR. STEARNS: Your HOnor, I object to that as non-

responsive. The question was merely as to, did you discuss it with them, the two men he was with, and not --

THE COURT: I don't know what "them" means.

THE WITNESS: I still have answered it.

Q Sir, by the way, when you came to this deposition, before the trial of this case, at the office of Wilson & Hopkins, did you at any time during the course of that deposition make any mention of anybody's failure to step on any line?

MR. GOLDSTEIN: Objection, if your Honor please, to the form. That is not the proper way to cross-examine on a deposition.

THE COURT: Oh, it is on the whole deposition.

MR. GOLDSTEIN: It does not show if a question was asked.

THE COURT: Sustained. There is no proof that any such question was asked, which called for the answer.

Q Sir, do you remember this question and this answer, and it is at page 31, line 9:

"Question: Did you say anything to either Schmidt or Frank when this happened?"

A No, sir, I don't think I said.

Q And the answer is: "Not at the moment, you know, I continued working."

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A Yes.

Q Do you remember that question and that answer?

A That's correct.

Q And was the answer that you gave at that time true?

A Yes.

Q You said nothing to either of these two men?

A Not at the moment, no.

Q You had just been yanked off your feet?

A Yes.

Q When these two men let go simultaneously?

A Yes, sir.

Q You had been badly hurt, you had been knocked to the deck, and you said nothing?

A No, I did not.

Q You did not say anything to the bosun when he returned, did you?

A Later on I told, like I said before, I think, bosun asked me to be the middle man --

THE COURT: I can't hear. What did you say about the bosun?

THE WITNESS: What was the question?

THE COURT: Did you say anything to the bosun after the accident? Did you?

THE WITNESS: Later on.

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THE COURT: When? When was it later on?

THE WITNESS: That night.

THE COURT: What time?

THE WITNESS: I don't know exactly the time, but later on.

THE COURT: Where? Where did you see him?

THE WITNESS: He was working with us.

THE COURT: Where was he working with you? In the tanks?

THE WITNESS: Around the tanks, yes, with the machine.

THE COURT: What did you say to him?

THE WITNESS: He asked me --

THE COURT: No, what did you say to him? He asked you something. What did you say to him?

THE WITNESS: I told him I hurt my back the night before, you know, and that is why I wouldn't be the middle man. That is the first time anybody knew about me being hurt on the ship. Now to his question?

Q That is right, the bosun was the first person to know that you had been hurt on the ship, because Schmidt --

A Bosun or Schmidt, I don't know.

Q Schmidt and Frank did not know because they did not see this, isn't that so?

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MR. GOLDSTEIN: Objection, if your Honor please.

THE COURT: Sustained.

Q You eventually told the chief mate that you had had an accident, isn't that right?

A The following morning, like I testified before.

Q You told him not that you had had an accident but that you had gotten hurt handling the butterworth, isn't that right?

A That is right, that is what I wrote down on the paper, and I believe you have it.

MR. STEARNS: Your Honor, at this time I will offer a copy which is handy. I have the original in the bag. I will save time.

THE COURT: Is this offered now?

MR. STEARNS: Yes. I am going to offer it.

(Defendant's Exhibit D was marked for identification.)

MR. STEARNS: I will substitute the original when I find it in the bag.

Q Mr. Porss, this is a photocopy; it appears in two pages but actually it is just the back.

First of all, is that your signature?

A Yes, sir.

Q Is that what you told the chief mate when you

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reported this incident?

MR. GOLDSTEIN: Objection, if your Honor please.

A I told him what?

MR. GOLDSTEIN: Hold it, please.

THE COURT: what is the objection?

MR. GOLDSTEIN: The objection is --

THE WITNESS: My handwriting is on the paper, nothing else.

MR. GOLDSTEIN: I have an attorney standing over Mr. Porss and picking out some parts, and he said, "Is this what you told him?" Nobody knows what he is talking about. Your Honor doesn't; I don't; the jury doesn't.

THE COURT: Sustained in that fashion.

Offer it if you want to.

MR. STEARNS: I offer it in evidence.

THE COURT: If it has been stated to be his signature.

MR. STEARNS: That is his signature.

THE COURT: You will substitute the original, counselor? You have the original?

MR. STEARNS: Yes, sir.

MR. GOLDSTEIN: If your Honor please, may I ask some questions about this thing? I have not seen it before this moment.

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THE COURT: What questions do you want to ask him? It depends on the questions. He has conceded that it is his signature.

THE WITNESS: It is my signature, but --

THE COURT: Don't say anything more unless you are questioned. Is that the original?

MR. STEARNS: That is the original, sir.

THE COURT: You had better have that marked and offer that one, then. Get the concession that it is his signature.

MR. GOLDSTEIN: Mr. Stearns, here.

Q Mr. Porss, I am showing you the new Defendant's Exhibit D, which is the original of the old one on the back. Is this your signature?

A That is my signature.

MR. STEARNS: Offer it in evidence.

THE COURT: That is your signature, isn't it?

THE WITNESS: Yes, sir.

THE COURT: Offer it.

MR. GOLDSTEIN: No objection.

THE COURT: Mark it, Mr. Clerk.

(Defendant's Exhibit D was received in evidence.)

MR. STEARNS: Your Honor, may I read that?

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THE COURT: Yes, you may.

MR. STEARNS: Where it is signed by Mr. Porss.

THE COURT: Yes.

MR. STEARNS: He says -- statement by injured person -- "At the moment when the accident happened, I did not think much of it, but the next morning I could not get up any more. At present I can walk around, but cannot stand or sit up too long."

I would also like to read part 9.

"Describe fully how and where the accident happened.

"At the process of pulling the butterworth hose up from the tank onto the deck."

Q When you went to the chief mate, you did not, did you, tell him about Schmidt and Wherrity and Frank letting go. Isn't that right? You just told him that you were hurt?

A I did not go to the chief mate.

Q Eventually when you did?

A I did not go to him. He came to me.

Q You never reported to the chief mate.

A He came to me.

Q All right, he came to you. You just told him that your back was bothering you, that it was hurt while you were handling the butterworth lines; isn't that right?

MR. GOLDSTEIN: If your Honor please, the exhibit speaks for itself.

THE COURT: Yes, but this is cross-examination.

MR. GOLDSTEIN: It is his exhibit.

THE COURT: That does not make any difference. Overruled.

Q Can you answer the question?

(Question read)

A That's correct.

Q You just in fact told him that you were hurt on the job, isn't that right?

A What's written on the paper, that is what I told him.

Q You did not tell the bosun and you did not tell the chief mate and you did not tell Schmidt or Frank that you had been hurt when they together let go of the lines.

A That's right, I did not.

THE COURT: All right. That is all, counselor.

MR. STEARNS: Your Honor, there are a few things -- well, all right.

THE COURT: No, finish up your cross, by all means, but let us do it as soon as possible.

MR. STEARNS: I just have a couple more questions. Just five minutes.

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THE COURT: All right.

Q Did you tell anybody when you went to the United States Public Health Service Hospital in New Orleans, did you tell anybody there about this fall, about people letting go a line and about you falling forward?

MR. GOLDSTEIN: Objection, if your Honor pleases. There is no requirement that such a thing be told to the doctors.

THE COURT: What is it?

MR. GOLDSTEIN: There is not such a requirement that such a thing be told.

THE WITNESS: All right, I can answer it.

THE COURT: I suppose the record may have some history there. Is there a record?

MR. STEARNS: Yes, sir.

THE COURT: A history record here?

MR STEARNS: Yes.

MR. GOLDSTEIN: Of questions of liability?

MR. STEARNS: Not questions of liability. About what he said happened.

Q What did you say had happened?

THE COURT: Wait a minute, now. Calm down.

MR. GOLDSTEIN: Let us be calm, Mr. Stearns.

THE COURT: Let me say this, Mr. Goldstein, if I

can be heard. Obviously, whatever a plaintiff states in history in going into the hospital is admissible against interest, and therefore you may read in whatever was said, been written down, or you may ask him what he said.

Q What did you say at New Orleans?

A I believe it ended up that I was lifting a heavy object and something like that.

Q You felt something go on your back, isn't that right?

A That's right. That's approximately what I said.

Q You did not say anything about people letting go a line and you falling forward?

A I don't have to tell him that.

Q You say you went back, you were fit for duty in sometime either July or August 1971, and that after that you went back to the hospital and got more treatment, back to the hospital as an outpatient.

What ship was the ship that you sailed on just before the Overseas Aleutian?

A I have to look it up. Can I?

Q Yes, sir.

THE COURT: Look it up if you don't remember. Refresh your recollection.

A I don't reme;ber.

THE COURT: Well, I know, you said that. Now, have you got something there that shows it?

THE WITNESS: Yes, sir.

THE COURT: In your record? Look it up and then tell us.

THE WITNESS: The Azalea City, is that correct?

THE COURT: Don't ask someone else. You are the one to answer it.

THE WITNESS: I am telling him the Azalea City.

THE COURT: What is the name of it?

THE WITNESS: Azalea City.

Q When did you get off of Azalea City?

THE COURT: Do you have the record on that there?

THE WITNESS: May 14, 1970.

Q What did you do between May 14, 1970, and June 6, 1971, thirteen months?

A I didn't work.

Q You did not work. Did you not work because of your back?

A No, sir. I don't have no back problem.

Q You just did not work, is that right?

A That's right.

THE COURT: What is the name of this ship, again, please?

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MR. STEARNS: Azalea City.

THE COURT: How do you spell that word?

MR. STEARNS: A-z-a-l-e-a City.

THE COURT: All right.

Q There is no physical reason why you did not work for those thirteen months that you did not go on the Overseas Aleutian; is that right?

THE COURT: Speak; don't just shake your head. The reporter has to take down what you are saying.

A No, sir.

Q You simply were on this ship, the Overseas Aleutian, for a period of five days, between June 6 and June 11, 1971, and then you went back to work again in November 1972, is that right?

A That's right.

Q Do you feel that Schmidt and Wherrity deliberately let go, you claim, this machine and hose?

A I don't claim.

MR. GOLDSTEIN: Objection.

THE COURT: Sustained.

MR. STEARNS: Your Honor, this is pertinent.

THE COURT: I don't know how.

MR. STEARNS: May I be heard at the side bar?

THE COURT: I suppose so.